SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

THE FEDERAL LAND BANK OF ST. LOUIS, PETITIONER,

vs.

A. B. PRIDDY, JUDGE, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 20, 1934.

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[fol. 1] [Caption omitted]

[File endorsement omitted.]

[fol. 2]

IN SUPREME COURT OF ARKANSAS

THE FEDERAL LAND BANK OF ST. LOUIS, Petitioner,

vs.

A. B. PRIDDY, Circuit Judge, Respondent,

in the Case of

S. M. BRISCOE, Plaintiff,

vs.

THE FEDERAL LAND BANK OF ST. LOUIS, a Corporation, Defendant

PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1934

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

On this day comes The Federal Land Bank of St. Louis, a corporation, defendant in the above styled cause, petitioner herein, and respectfully states to the Court that the plaintiff herein instituted suit against this petitioner in the Circuit Court of Pope County, Arkansas, on or about the 6th day of January, 1934, in which petition the plaintiff alleges this petitioner to be justly indebted unto him in the sum of Three Hundred Dollars ($300.00) and prays for personal judgment against petitioner for said sum, together with interest thereon and for costs of suit.

This petitioner further states that the plaintiff also alleges in his petition:

"That the defendant is a non-resident banking corporation organized under and by virtue of an Act of Congress of the United States, approved July 17th, 1916, operating within a district composed of the states of Missouri, Illinois and Arkansas, with its domicile and principal place

of business in the city of St. Louis, in the State of Missouri.

"That the defendant engages in the business of lending money on real estate throughout its district, and has lent [fol. 3] large amounts in Pope County, Arkansas, and through foreclosure proceedings in the courts of said county has acquired a number of farms in Pope County, Arkansas, and is now the owner of same and is renting said lands and collecting the rents on same and transacting other business connected with said farms through E. D. Allmon, of Russellville, Arkansas.

"That the officers of defendant do not reside in the State of Arkansas, and that defendant has no branch office in this state, neither has it designated an agent in this state upon whom service of summons may be had."

This petitioner further states that the plaintiff attempted to obtain service upon it by publication of warning order and by writ or order of general attachment and summons issued by the Clerk of said Court and delivered to the Sheriff of Pope County, Arkansas, who on January 6, 1934, attempted to serve same by levying upon the property described in plaintiff's petition and by delivering copy of same to E. D. Allmon, according to the endorsement made on the writ by the Sheriff of said County.

This petitioner further states that it did on the 19th day of February, 1934, enter its special and limited appearance in said cause by filing motion to quash service, to dismiss suit and dissolve attachment for lack of jurisdiction of the Court and for reasons therefor, stated:

First. That it is a national corporation organized and existing under and by virtue of an Act of Congress of the United States approved July 17, 1916; that by the terms of its charter it is authorized to do business in Missouri, Illinois and Arkansas, and that its principal office is located in the City of St. Louis, in the State of Missouri.

[fol. 4] Second. That as a national corporation it is not required to comply with the laws of the State of Arkansas pertaining to foreign or domestic corporations and is not required to receive authority from the State of Arkansas as a condition precedent to doing business thereon.

Third. That the property of this defendant situated in the State of Arkansas is not subject to attachment in this

cause and that the service of process by publication of warning order and order of general attachment and summons is not legal and proper service upon it.

This petitioner further states that its motion was submitted and heard by the Honorable A. B. Priddy, the duly elected, qualified and acting Judge of the Circuit Court of Pope County, Arkansas, on the 2 day of April, 1934, which was the first day of the April, 1934, term of the Pope County Circuit Court, and that said Court entered judgment in said cause, overruling petitioner's motion and directing that said cause be submitted for trial on the — day of ——, 1934.

This petitioner further states that it is a national corporation, organized and existing under and by virtue of an Act of Congress of the United States, approved July 17, 1916, and is not required to comply with the laws of the statutes of Arkansas pertaining to domestic or foreign corporations before it is legally authorized and entitled to do business therein, and that said Court did not acquire jurisdiction in said cause and exceeded its authority in assuming jurisdiction and rendering judgment, overruling petitioner's motion to quash service and dismiss suit.

And this petitioner herewith exhibits to this Court certified copy of the record and proceedings had in said Court [fol. 5] in said cause under the hand and seal of the duly elected, qualified and acting Clerk of said court in the establishment of the matter stated in this petition, said copy being marked Exhibit "A" and made a part hereof.

Wherefore, this petitioner implores the aid of this Court and prays that the Clerk of this Court be authorized and directed to issue writ of prohibition directed to the Honorable A. B. Priddy, Judge of the Circuit Court of Pope County, Arkansas, to prohibit him from exercising jurisdiction in said cause and to prohibit him from in any manner enforcing said judgment or taking any steps whatever in said cause; and prohibiting him, the said Judge, from making or entering any order, judgment or decree in or about said cause; and generally from the further exercise of jurisdiction in said cause or the enforcing of any order, judgment or decree made under color thereof.

The Federal Land Bank of St. Louis, a Corporation,
by J. R. Crocker, Counsel.

I, C. C. Wait, attorney for the plaintiff hereby waive notice of application for a writ of prohibition and agree that same may be filed without further notice.

C. C. Wait, Attorney for Plaintiff.

[fol. 6] EXHIBIT "A" TO PETITION FOR WRIT OF PROHIBITION

IN CIRCUIT COURT OF POPE COUNTY, ARKANSAS

S. M. BRISCOE, Plaintiff,

vs.

THE FEDERAL LAND BANK OF ST. LOUIS, MISSOURI, Defendant

COMPLAINT AT LAW

Comes the plaintiff and complains of the defendant, and for cause of action states:

That the plaintiff is a real estate broker licensed to operate as such under the laws of the State of Arkansas, and is engaged in the business of negotiating sales of land.

That the defendant is a non-fesident banking corporation organized under and by virtue of an Act of Congress of the United States, approved July 17, 1916, operating within a district composed of the states of Missouri, Illinois and Arkansas, with its domicile and principal place of business in the city of St. Louis, in the State of Missouri.

That the defendant engages in the business of lending money on real estate throughout its district, and has lent large amounts in Pope County, Arkansas, and through foreclosure proceedings in the courts of said county has acquired a number of farms in Pope County, Arkansas, and is now the owner of same and is renting said lands and collecting the rents on same and transacting other business connected with said farms through E. D. Allmon, of Russellville, Arkansas.

That the officers of defendant do not reside in the State of Arkansas, and that defendant has no branch office in this state, neither has it designated an agent in this state upon whom service of summons may be had.

That the defendant employed this plaintiff to procure purchasers for certain tracts of land owned by the defend-

ant in this part of Arkansas, and agreed to pay plaintiff [fol. 7] a commission of 5% upon the purchase price agreed upon between defendant and any purchaser or purchasers that plaintiff might procure for it.

That acting under said agreement this plaintiff secured purchasers for a number of tracts of land belonging to the defendant, with whom defendant entered into a contract of sale, and paid to this plaintiff the commission agreed upon.

That among the lands for which plaintiff was authorized to procure a purchaser was a certain tract of land belonging to the defendant consisting of 199.98 acres, known as the J. Frank Miller farm or the L. M. Lynch farm in Yell County, Arkansas.

That acting under the directions of the defendant, and in pursuance of this contract with the defendant, plaintiff procured for the defendant a purchaser for said lands who was able, willing and ready to purchase said lands, and that said purchaser entered into a written contract to purchase said lands, at and for an agreed price of Six Thousand ($6,000.00) Dollars, and made a down payment of Five Hundred ($500.00) Dollars, which contract and down payment was accepted by the defendant, and a duplicate copy of said contract duly signed by the defendant was returned to the purchaser. That the original and copy of said contract is now in the hands of the defendant and defendant's purchaser and is not accessible to this plaintiff.

That sometime after the execution of said written contract and the acceptance of the down payment of Five Hundred Dollars, the defendant, for some reason unknown to this plaintiff, refused to carry out its contract of sale to the purchaser, and returned to the purchaser the $500.00 paid by him, and has continued to refuse to carry out its agreement to sell said lands.

[fol. 8] That in procuring said purchaser who was ready, able and willing to carry out said contract of sale, this plaintiff has done all that was required of him under his contract with the defendant, and is entitled to his commission of 5% upon the sale price of Six Thousand Dollars, or to a commission of Three Hundred ($300.00) Dollars.

That due demand has been made upon the defendant for the payment of said commission of Three Hundred Dollars by the plaintiff and payment has been refused.

That among the several hundred acres of farm lands owned by the defendant in Pope County is the following described lands, to-wit: The South half of the Northwest quarter of the Northeast quarter, and the Southwest quarter of the Northeast quarter of Section five (5), Township eight (8) North, Range Twenty (20) West, containing Sixty (60) acres, more or less.

That the above described lands are not essential to the operation of the business of defendant but were taken over for a debt due defendant and are being held by defendant for the purpose of resale.

Wherefore, plaintiff prays that an attachment be issued by the Clerk of this Court and levied upon the above described lands, and that summons or warning order be issued as provided by law, and that upon a final hearing of this cause that plaintiff be given judgment for the sum of Three Hundred ($300.00) Dollars, and that the attachment against the above described lands be sustained, and that said lands be sold for the satisfaction of said judgment, interest and costs of this proceeding.

C. C. Wait, Attorney for Plaintiff.

[fol. 9] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

MOTION TO QUASH SERVICE AND DISMISS SUIT

Comes the Federal Land Bank of St. Louis, the defendant herein, and appears specially for the purpose of this motion and none other, and moves the Court to dismiss this suit for lack of jurisdiction, and for reasons therefor states:

First. That it is a national corporation organized and existing under and by virtue of an Act of Congress of the United States approved July 17, 1916; that by the terms of its charter it is authorized to do business in Missouri, Illinois and Arkansas, and that its principal office is located in the City of St. Louis, in the State of Missouri. A certified copy of defendant's charter is attached hereto, marked Exhibit "A", and made a part hereof.

Second. That as a national corporation it is not required to comply with the laws of the State of Arkansas pertaining to foreign or domestic corporations and is not required to receive authority from the State of Arkansas as a condition precedent to doing business therein.

Third. That the property of this defendant situated in the State of Arkansas is not subject to attachment because it is an instrumentality of the Government of the United States, and that the service of process by publication of warning order and order of general attachment and summons is not legal and proper service upon it.

Wherefore, this defendant prays that the service had upon it by publication of warning order and summons by order of general attachment be quashed, the suit dismissed, [fol. 10] and attachment dissolved.

J. E. Crocker, Attorney for Defendant.

[fol. 11] EXHIBIT "A" TO MOTION TO QUASH, ETC.

(Copy)

The Federal Land Bank of St. Louis

Number 6

Office of the Federal Farm Loan Board

Washington, D. C., March 8th, 1917.

Whereas, The Federal Land Bank of St. Louis, of the City of St. Louis, State of Missouri, and in the Sixth Federal Land Bank district, has filed with the Farm Loan Commissioner, its Organization Certificate as required by law, and done and performed all things required by law to be done before completing its organization;

Now therefore, The Federal Farm Loan Board does hereby grant this Charter to The Federal Land Bank of St. Louis, and said The Federal Land Bank of St. Louis is hereby authorized and empowered to do and perform all acts, and transact all business which may be legally done, performed and transacted by a Federal Land Bank, under and in accordance with the provisions of the Act of Con-

gress, approved July 17, 1916, known as "The Federal Farm Loan Act," and to do all other things implied and incident thereto, within the states of Illinois, Missouri and Arkansas.

In witness whereof, The Federal Farm Loan Board has caused this charter to be signed by its executive officer, Farm Loan Commissioner, attested by its Secretary, and has caused its seal to be hereunto affixed this eighth day of March, 1917.

Federal Farm Loan Board, by (Signed) Geo. W. Norris, Farm Loan Commissioner. Attest: (Signed) W. W. Flannagan, Secretary. (Seal.)

[fol. 12] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION TO QUASH, ETC.

On this 2nd day of April, 1934, the same being the first day of the April, 1934, term of the Pope County Circuit Court, comes the plaintiff by his solicitor, C. C. Wait, and comes the defendant by its solicitor, J. R. Crocker, and is submitted to the Court the motion of the defendant to quash service, dismiss suit and dissolve attachment had in said cause.

And the court, after hearing argument of counsel and being well and sufficiently advised in the premises doth overrule defendant's motion.

A. B. Priddy, Judge.

[fol. 13] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ORDER OF GENERAL ATTACHMENT AND SUMMONS—Filed Jan. 8, 1934

The State of Arkansas, to the Sheriff of Pope County, Greeting:

You are commanded to attach and safely keep the property of the defendant, The Federal Land Bank of St. Louis,

Missouri, described as: The South Half of the Northwest Quarter of Section Five (5), Township Eight (8) North, Range Twenty (20) West, in Pope County, Arkansas, containing Sixty (60) acres, more or less, in your county, not exempt from execution, or so much thereof as will satisfy the claim of S. M. Briscoe, the plaintiff in this action, for Three Hundred and no/100 ($300.00) Dollars (*$300.00*), and cost of this proceeding; not exceeding Thirty and no/100 Dollars ($30.00), for the cost thereof; and you are also commanded to summon the said The Federal Land Bank of St. Louis, Missouri, to answer on the first day of the next April Term of this Court the complaint filed thereon against it by said S. M. Briscoe, and also to summon and — such other persons as the plaintiff may suggest, as garnishees, to answer to this action on the first day of the said term; and you will make due return of this order on that day.

Witness my hand and seal of said court this 6th day of January, 1934.

Jim Tucker, Clerk. (Seal.)

On reverse side appears the following:

[fol. 14] [Title omitted]

SHERIFF'S RETURN

STATE OF ARKANSAS,
County of Pope, ss:

I have this 6th day of January, A. D. 1934, duly served the within by levying same upon the S½ NW¼ NE¼ and SW¼ of NE¼, Section 5, Township 8 North, Range 20 West, in Pope County, Arkansas, containing 60 acres, more or less, by delivering a true copy of — to the tenant living on said premises and by delivering a copy of same to E. D. Allmon, the party in charge of renting said premises.

J. L. Bell, Sheriff, by Cecil McCarley, D. S.

Service, $1.50.
Mileage, 1.60.
Return, .20.

[File endorsement omitted.]

[fol. 15] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

CERTIFICATE OF LEVY OF ATTACHMENT

Notice is hereby given that I, J. L. Bell, Sheriff of Pope County, Arkansas, do hereby certify that a writ of attachment in the above styled cause came to my hands on the 8th day of January, 1934, at 1:30 P. M. and that the same was by me on the said 8th day of January, 1934, duly levied upon the following described lands, in Pope County, Arkansas, to-wit:

The South Half of the Northwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter of Section Five (5), Township Eight (8) North, Range Twenty (20) West, containing Sixty (60) acres, more or less.

That said levy of attachment was made by me on the said 8th day of January, 1934, between the hours of 9 A. M. and 3 P. M. of said day and that due return of said writ was made by me to the Circuit Clerk of Pope County, Arkansas.

In witness whereof I have hereunto set my hand on this the 14th day of January, 1934.

J. L. Bell, Sheriff of Pope County, by Cecil McCarley, D. S.

[fol. 16] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

AFFIDAVIT FOR WARNING ORDER

The plaintiff, S. M. Briscoe, states that the defendant, The Federal Land Bank of St. Louis, Missouri, is a corporation and a non-resident of the State of Arkansas, and that it maintains no branch office in said state and has not designated an agent upon whom service of summons may be had.

S. M. Briscoe, Plaintiff.

Subscribed and sworn to before me a Circuit Clerk on this the 6th day of January, 1934. Jim Tucker, Circuit Clerk. (Seal.)

[fol. 17] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

Affidavit and Bond for Attachment

AFFIDAVIT

I, S. M. Briscoe, state that the claim in this action against the said defendant is for money due upon contract, as set forth in the foregoing complaint, which I believe to be true; that it is a just claim, and that I believe the plaintiff ought to recover thereon Three Hundred and no/100 ($300.00) Dollars, and that said defendant, Federal Land Bank of St. Louis, Missouri, is a foreign or non-resident corporation, and that it has designated no agent in the State of Arkansas upon whom service of summons can be had, and maintains no branch office in the State of Arkansas.

S. M. Brisoce.

Sworn to and subscribed before me, this — day of January, 1934. Jim Tucker.

[Title omitted]

BOND

We undertake that the Plaintiff shall pay to said Defendant all damages which it may sustain by reason of the attachment in this action if the order therefor is wrongfully obtained.

[fol. 18] S. M. Briscoe, Joe F. Willard, W. A. Price.

Attest Jan. 6, 1934, Jim Tucker, Clerk.

[fol. 19] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

WARNING ORDER

Whereas, on the 6th day of January, 1934, a writ of attachment in the above styled cause was issued out of this court and levied upon

The South Half of the Northwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast

Quarter of Section Five (5) in Township Eight (8) North, Range Twenty (20) West, in Pope County, Arkansas, and containing 60 acres, more or less,

as shown by the return on said writ, same being levied upon as the property of the defendant to satisfy the claim of the plaintiff in the sum of Three Hundred and no/100 ($300.00) Dollars, and the cost of this proceeding.

Now, therefore, the defendant, The Federal Land Bank of St. Louis, is hereby warned to appear in this court on the first day of its next April term, 1934, and answer to the complaint of the plaintiff, S. M. Briscoe.

Witness my hand and seal as such Clerk on this the 8th day of January, 1934.

Jim Tucker, Clerk.

C. C. Wait, Attorney for Plaintiff.
Joe D. Shepherd, Attorney for non-resident Defendant.

[fol. 20] IN CIRCUIT COURT OF POPE COUNTY

[Title omitted]

ANSWER OF ATTORNEY AD LITEM

Comes Joe D. Shepherd, a regular practicing attorney of this bar, heretofore on the 8th day of January, 1934, appointed by this court as attorney ad litem to represent the defendant Federal Land Bank of St. Louis, reports as follows:

That immediately upon receiving my appointment, I wrote to J. R. Crocker attorney for the defendant, at St. Louis, Mo., informing him of the pendency of the action and inquired if he desired me to file any pleadings in the case. He replied to my letter and informed me that he would look after the matter and file such pleadings as he might think necessary.

As I know of no defense that can be interposed to the action, I ask that plaintiff be held to strict proof of each and every allegation of his complaint.

Respectfully submitted, Joe D. Shepherd, Attorney ad litem.

[fol. 21] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 22] IN SUPREME COURT OF ARKANSAS

May Term, 1934

3515

Prohibition to Pope Circuit Court

THE FEDERAL LAND BANK OF SAINT LOUIS, MISSOURI, Petitioner,

v.

A. B. PRIDDY, JUDGE, Respondent

JUDGMENT—June 18, 1934

This cause came on to be heard upon the petition and response, and was argued by counsel, on consideration whereof it is the opinion of the Court that under the Act of Congress under which the petitioner was organized, said petitioner may be sued in a proper action in the courts of this state wherever service can be had upon it either actually or constructively, and that the constructive service upon it in this case confers jurisdiction upon the circuit court of Pope county to proceed with the trial and decision of the attachment suit instituted against it in said county by the plaintiff, S. M. Briscoe.

It is therefore considered by the Court that the petition for prohibition herein be, and the same is hereby denied, and said petition is dismissed.

Opinion by Humphreys, J.; Smith and Mehaffy, JJ., concur; McHaney and Butler, JJ., dissent.

[fol. 23] IN SUPREME COURT OF ARKANSAS

No. 28

THE FEDERAL LAND BANK OF ST. LOUIS

v.

PRIDDY, JUDGE

OPINION—June 18, 1934

HUMPHREYS, J.:

This is an application to this court for a writ of prohibition to prevent the Circuit Court of Pope County, Arkansas, from proceeding with the trial of the case of S. M. Briscoe v. The Federal Land Bank of St. Louis, a corporation, upon constructive service. Constructive service was obtained under the provisions of our statute (Crawford & Moses' Digest, Secs. 1159-1160) by suing out a general writ of attachment on the ground that The Federal Land Bank of St. Louis was a foreign corporation and by levying same upon land in Pope County belonging to said corporation and duly publishing a warning order notifying said corporation to appear in said court and defend the action.

The petitioner herein appeared in response to the warning order for the sole purpose of contesting the service and filed an unverified motion to quash the service on the grounds: first, that it was not a foreign corporation; and, second, that its property in the State of Arkansas is not subject to attachment because said corporation is an instrumentality of the Government of the United States.

The motion was overruled, and this application for a writ of prohibition followed.

The basis of this suit was a claim for a commission of $300 alleged to have been earned by a duly licensed real estate broker for the sale of a farm valued at $6,000, acquired by The Federal Land Bank of St. Louis, Missouri, through foreclosure proceedings to enforce the collection of money it had loaned.

[fol. 24] Personal service could not be obtained because The Federal Land Bank of St. Louis, Missouri, had not and was not required to maintain a branch office in the State of Arkansas nor to designate an agent in the State

of Arkansas upon whom service of summons may be had before it could do business in the state.

The banking corporation was organized under the provisions of an Act of Congress of the United States, approved July 17, 1916, for the purpose of lending money upon mortgage securities in the States of Missouri, Illinois and Arkansas, with its domicile or its principal place of business in the City of St. Louis, Missouri.

The Act authorizing the creation or organization of the corporation provides, in paragraph 6 of Section 4, that such banking corporations, when organized, may "sue or be sued, complain, interplead, and defend in any court of law, or equity, as fully as natural persons.

(1) The first contention of petitioners in support of their request for a writ of prohibition is that The Federal Land Bank of St. Louis cannot be sued anywhere except in a court of competent jurisdiction within the territorial limits of its domicile in St. Louis, Missouri. This contention is without merit as the Act of Congress authorizing the creation of said banking corporation provides in the plainest language that it may be sued in any court of law or equity as a natural person may be. This section can have no other meaning except that the corporation may be sued wherever service can be obtained upon it, actually or constructively. However, petitioner argues that the constructive service in the instant case was insufficient because the basis of the service rests upon the allegation that it is a foreign corporation; whereas, it was not made a foreign [fol. 25] corporation with respect to Arkansas by the Act of Congress authorizing its creation. Authorities are cited by petitioner tending to support the theory that it is a domestic corporation of the United States and consequently a domestic corporation or resident of the State of Arkansas, as Arkansas is a part of the United States. These authorities are not in point because they do not take into consideration our statutes defining foreign corporations. Foreign corporations, in contemplation of law in this State, are defined by statutes in the following language:

"A foreign corporation is one created by the laws of some other state or country." Sec. 9743 of Crawford & Moses' Digest.

"The words 'other country' signify any part of the world out of this State." Sec. 9744 of Crawford & Moses' Digest.

In 14a C. J., 1214, Sec. 2934, in discussing the subject of whether a Federal corporation is foreign in states, it is said:

"Under statutes defining a foreign corporation as one created under the laws of any other state, government or country, a Federal corporation has been held to be a foreign corporation with respect to a state."

We are of opinion that The Federal Land Bank of St. Louis, Missouri is a foreign corporation and that the constructive service was sufficient.

(2) The second contention of petitioner in support of its request for a writ of prohibition is that the Federal Land Bank of St. Louis, Missouri, is an instrumentality of the Government of the United States and that on that account its property is not subject to attachment. In the Act authorizing the creation of said banking corporation, there is no limitation or restriction against reaching its property by attachment. We know of no law preventing levy by attachment against the property of corporations created [fol. 26] by act of Congress except preventing attachment against the property of National banks before judgment is obtained against them. Van Reed v. Peoples National Bank, 198 U. S. 554. If Congress had intended that the property of The Federal Land Banks should not be subject to attachment, it would have prohibited same in the Act. We think the case of The State of Missouri ex rel. St. Louis, Brownsville & Mexico Ry. Co. v. Taylor, Judge of the Circuit Court of the City of St. Louis, 266 U. S. 200, announces principles applicable to the case in hand.

The writ is, therefore, denied.

McHaney and Butler, JJ., dissent.
Smith and Mehaffy, JJ., concur.

[fol. 27] IN SUPREME COURT OF ARKANSAS

[Title omitted]

MOTION FOR REHEARING

Now comes The Federal Land Bank of St. Louis, a corporation, petitioner herein, by its attorneys, and respect-

fully prays that a rehearing be granted in the above entitled cause on the grounds and for the following reasons, to-wit:

1. That this Court in the course of its opinion inadvertently overlooked the fact that the respondent attempted to sue out a specific attachment against property belonging to petitioner, which remedy was not available to respondent except to enforce a specific lien against the property sought to be attached; and inasmuch as the respondent had no lien or claim against the property the attachment falls.

Reference: Page 33 of petitioner's brief.

2. That this Court inadvertently based its finding that the property of petitioner may be attached regardless of the fact that it may be an instrumentality of the Government of the United States upon the language of paragraph 6, Section 4 of the Act of Congress providing for the creation of the Federal Land Banks, which section provides that it "may sue or be sued, complain, interplead and defend in any Court of law or equity," etc., and on the definition of the term "foreign corporation" as fixed by the General Assembly of the State of Arkansas, evidently overlooking the general law of the State of Arkansas and decisions of the United States Supreme Court in conflict with such holding.

Reference: Page 29 of petitioner's brief.

3. This Court held in its opinion that the basis of the suit was a claim for commission of Three Hundred Dollars [fol. 28] ($300.00) alleged to have been earned by a duly licensed, real estate broker for the sale of the farm acquired by the petitioner through foreclosure proceedings. The petitioner has not acquired title to the property through foreclosure proceedings or otherwise.

4. This Court in its opinion inadvertently failed to make a direct finding on the question as to whether the petitioner is an instrumentality of the Government of the United States, although it indicated such to be the case—if it is in fact such an instrumentality, then the Court overlooked its previous opinions involving the question of the right of garnishment or attachment of property held by instrumentalities of the State. If the petitioner is in fact an instrumentality of the Government of the United States, then its property wherever situated is not subject to attachment before judgment.

Reference:

Goyer Co. v. Williamson, 107 Ark. 189.
Sallie v. Bank of Corning, 135 Ark. 109.
Bull v. Zeigler, 186 Ark. 477.
State ex rel. Ark. Const. Com. v. Toler, Judge. Opinion delivered March 19, 1934.
And other cases cited on pages 31 and 32 of plaintiff's brief.

In view of the fact that this Court has apparently overlooked the matters hereinbefore mentioned, petitioner prays that a rehearing be granted and that on such rehearing the application of petitioner for writ of prohibition be granted.

Respectfully submitted, Guy V. Head, J. R. Crocker, L. F. Reeder, Attorneys for Petitioner.

[fol. 29] *Duly sworn to by J. R. Crocker. Jurat omitted in printing.*

[fol. 30] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING MOTION FOR REHEARING—September 24, 1934

Rehearing Petitions Denied

Being fully advised, the petitions for rehearing in the following causes are by the Court severally overruled, viz:

* * * * * * *

The Federal Land Bank of St. Louis v. A. B. Priddy, Judge.

* * * * * * *

[fol. 31] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 32] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 4, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,
Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, the Federal Land Bank of St. Louis, respectfully prays for a writ of certiorari herein to review the decision of the Supreme Court of Arkansas, being the court of last resort of said State, denying a writ of prohibition to be directed to the respondent herein, which decision became final on September 24, 1934, when said court denied the application theretofore made in due time by this petitioner, for a rehearing of said cause and for a reconsideration of said decision.

Neither the final decision of the Supreme Court of Arkansas rendered on September 24, 1934, denying said ap-

plication for rehearing (R., p. 18), nor the decision and opinion theretofore rendered in said action on June 18, 1934 (R., p. 14), has yet been reported in the official reports of that court, but both of said decisions are reported in 74 S. W. (2d) 222 (advance sheets).

Statement of Facts.

Your petitioner is one of the twelve Federal land banks chartered by the Federal Farm Loan Board under the provisions of an Act of Congress approved July 17, 1916, and acts amendatory thereto, known and cited as the Federal Farm Loan Act (12 U. S. C. 641 *et seq.*; 39 Stat. 360, *et seq.*).* Petitioner is authorized by its charter to do business in the States of Arkansas, Illinois and Missouri. Petitioner maintains its offices in the City of St. Louis in the State of Missouri.

S. M. Briscoe, a real estate broker and a resident of Pope County, Arkansas, instituted an action in the Pope County, Arkansas, Circuit Court against this petitioner on or about the 6th day of January, 1934, said action being styled S. M. Briscoe, Plaintiff, *vs.* The Federal Land Bank of St. Louis, Defendant. In said action, plaintiff sought judgment against petitioner for the sum of $300.00 allegedly due as a commission on a contract for the sale of certain real property.

In said action, plaintiff Briscoe attempted to obtain service of process upon this petitoner by the attachment

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*For the convenience of the Court, petitioner has filed with the Clerk copies of a compilation of the laws relative to Federal agencies for farm credit, published by the Farm Credit Administration. This compilation is in the form of two pamphlets, one relating to long-term credit and the other to short and intermediate-term credit. The statutes are set forth in these pamphlets in accordance with the codification thereof in Title 12 of the United States Code.

of certain real property belonging to it, and by the publication of a Warning Order, in accordance with the provisions of §§ 1159 and 1160 of Crawford & Moses Digest of the Statutes of Arkansas (R., pp. 8-11).

Petitioner entered its special and limited appearance in said action and moved the court to quash the service, dissolve the attachment and dismiss the suit upon the grounds stated in said motion (R., p. 6). This motion was submitted to and overruled by the trial court on April 2, 1934 (R., p. 8).

Petitioner thereupon filed an original petition in the Supreme Court of the State of Arkansas for a writ of prohibition to be directed to the Honorable A. B. Priddy as Judge of the Circuit Court in and for Pope County, Arkansas, respondent herein, to prohibit him as such Circuit Judge from assuming jurisdiction of said action, and to prohibit him as such judge from making or entering any order, judgment or decree in or about said action (R., p. 1). This petition for writ of prohibition was heard and considered by the Supreme Court of the State of Arkansas, and an opinion and decision were rendered by said court on June 18, 1934, denying said petition (R., p. 14).

In due time petitioner filed a motion in the Supreme Court of the State of Arkansas, praying for rehearing of its said petition for a writ of prohibition (R., p. 16). Said motion for rehearing was denied by said court on September 24, 1934 (R., p. 18). The order of the Supreme Court of Arkansas, denying this bank's petition for rehearing of said petition, constitutes a final judgment of the highest court of said State.

Reasons Relied on for Writ of Certiorari.

The decision below deprived this petitioner of rights and immunities to which it is entitled under the Constitution

of the United States and under statutes enacted by the Congress of the United States, for the following reasons:

1. Petitioner is a Federal banking corporation, an agency and instrumentality of the Federal Government. As such instrumentality, it is immune from interference in the performance of its functions by the attachment or garnishment of its property before final judgment. Attachments and garnishments in such cases would clog and embarrass this Federal instrumentality. A Federal immunity would be assailed.

2. Section 4 of the Federal Farm Loan Act (12 U. S. C. 676) does not constitute a waiver of immunity from attachment or garnishment before judgment, in providing that Federal land banks may "sue and be sued • • • as fully as natural persons."

3. Petitioner, being incorporated under a statute of the United States, is not a "foreign corporation" in any State where it is authorized to do business. As such Federal or national corporation, petitioner is immune from State legislation relative to foreign corporations.

4. The Supreme Court of Arkansas, in refusing to prohibit interference with the performance of the functions of a Federal instrumentality, has departed from the rules laid down by this Court in the long line of cases commencing with *McCulloch* v. *Maryland*, 4 Wheat. 316, and reiterated by this Court throughout the past century.

5. The Supreme Court of Arkansas, in holding that a Federal land bank is a "foreign corporation" within one of the States of its district, has ignored the rule stated by this Court in the case of *Bankers Trust Co.* v. *Texas & Pacific Ry.*, 241 U. S. 295, and the decision below is in direct conflict with this Court's decision respecting the citizenship of a Federal corporation.

6. The precise question raised in this suit—the liability of the property of a Federal land bank to attachment before judgment—has never before been presented in a court of last resort in any State, and it has not been passed upon by this Court or by any Circuit Court of Appeals of the United States. The question is one of great practical importance, and if the decision below is permitted to stand, the results will be far-reaching.

This Court is thoroughly familiar with the general operations of the Federal land banks. The Court is undoubtedly aware of the large amount of Government money which has, from time to time during the past few years, been made available to the Federal land banks by Congressional appropriation, in the form of additional capital and surplus, in order to enable the banks to extend the time of payment of delinquent mortgages and to continue their lending operations.

By the Federal Farm Mortgage Corporation Act of January 31, 1934 (12 U. S. C. 1020 *et seq.*), Congress has made further provision for assistance to the Federal land banks in carrying out, as instrumentalities of the Government, its program for relieving and refinancing the burden of farm debt, which had become a national menace. By the terms of this act, Congress established the Federal Farm Mortgage Corporation, with a capital of $200,000,000 owned by the Government; and authorized the Corporation to issue and have outstanding bonds, fully and unconditionally guaranteed by the United States, to the extent of $2,000,000,000. These bonds may be issued in amounts equal to the assets of the Corporation, including assets represented by bonds of the Federal land banks acquired by the Corporation in exchange for an equal face amount of its bonds.

The banks are also acting as agents of the Federal Farm Mortgage Corporation for the making of direct loans to farmers under the Emergency Farm Mortgage Act of 1933 (12 U. S. C. 1016 *et seq.*) The banks are subject to designation by the Secretary of the Treasury as depositaries of the public money and financial agents of the Government (12 U. S. C. 701).

If Federal land banks were subject to interference in the performance of these functions by garnishments, attachments, executions, etc. issuing from State courts before final judgment, the efficiency of the banks as Federal instrumentalities would be greatly impaired, the Government's program for the rehabilitation of debt-burdened farmers would be seriously impeded and, in many individual cases, would be actually frustrated by the temporary tying-up of funds of the banks and of the Federal Farm Mortgage Corporation.

7. The Federal questions raised in this case are of equal importance to the other Federal land banks which operate in the field of long-term agricultural credit, and to other Government instrumentalities operating in the field of intermediate and short-term credit. In each Federal land bank district, these institutions operate under a common board of directors, pursuant to the provisions of Title II of the Federal Farm Loan Act (12 U. S. C. 1021, *et seq.*), and the Farm Credit Act of 1933 (12 U. S. C., 1131, *et seq.*) Thus, in each district four great Federal agencies operate under a single management which insures coordinated policies, these agencies being the Federal land bank, the Federal intermediate credit bank, the Bank for Cooperatives and the Production Credit Corporation of the district.

Conclusion.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Arkansas, commanding that court to certify and forward to this Court a full and complete transcript of the record in the proceeding in said Supreme Court had in the case numbered and entitled on its docket, No. 4-3515, The Federal Land Bank of St. Louis, a Corporation, Petitioner, *vs.* A. B. Priddy, Circuit Judge, Respondent, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and the petitioner may have such other and further relief in the premises as this Court may deem proper.

THE FEDERAL LAND BANK OF ST. LOUIS,
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Of Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Jurisdiction of This Court.

The juridiction of this Court is invoked under §237 of the Judicial Code (28 U. S. C. 344(b)).

The Supreme Court of Arkansas has power to issue a writ of prohibition under Art. VII, §4 of the State Constitution.* The decision of that court denying a writ of prohibition is a final judgment reviewable here. (*Missouri v. Taylor*, 266 U. S. 200; *Bandini Petroleum Co. v. Superior Court of State of California*, 284 U. S. 8.)

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* Crawford & Moses Digest of the Statutes of Arkansas, 1921, p. 73.

Application for review by this Court is being made on December 22, 1934, within three months after entry of final judgment below. Although the Supreme Court of Arkansas rendered its decision on June 18, denying the petition for writ of prohibition, such decision did not become final until September 24, when that court denied the application for rehearing. (*Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164.)

History of This Case.

The respondent is a judge of the circuit court in and for Pope County, Arkansas. A resident of Pope County, one Briscoe, brought suit in that Court against this petitioner, for recovery of a sum alleged to be owing under a contract. A writ of attachment was issued by the Circuit Court, as prayed in the petition, and a summons, directed to the defendant, was served upon its tenant on the property.

In issuing the attachment above mentioned, the Circuit Court apparently proceeded under the provisions of §494, Crawford & Moses Digest of the Statutes of Arkansas, although no reference is made to this section in the decision of the Supreme Court. This section provides that:

> "the plaintiff in a civil action may, at or after the commencement thereof, have an attachement against the property of the defendant * * * in an action for the recovery of money * * * where the action is against a defendant * * * who is a foreign corporation or non-resident of the State * * *."

Following the attachment, constructive service of process was attempted to be made upon this petitioner under the following provisions of §§1159 and 1160 of Crawford & Moses Digest of the Statutes of Arkansas:

> §1159. Warning order. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or

after the commencement of the action * * * that the defendant is:

First. A foreign corporation, having no agent in this State; or

Second. A nonresident of this State * * * the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order * * *."

"§1160. Publication. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. * * *"

The statutes of Arkansas further provide (C. & M. Dig. §1162) that

"a defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

A warning order was issued by the Circuit Court in reliance upon the above quoted provisions, and jurisdiction was assumed over the case.

The present action arose upon petitioner's application to the Supreme Court of Arkansas for a writ of prohibition to enjoin further proceedings in the case then pending before the Circuit Court. A further statement of the history of this case will be found at pages 2 and 3 of the annexed petition.

Assignments of Error.

1. The court erred in failing to hold that petitioner, being a Federal banking corporation and an instrumentality of the Federal government, is immune from interference in the performance of its functions by the attachment or garnishment of its property before final judgment.

2. The court erred in holding that §4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of immunity from attachment or garnishment before judgment, in providing that Federal land banks may "sue and be sued * * * as fully as natural persons."

3. The court erred in holding that a Federal land bank is a "foreign corporation" in any state of its district.

Immunity of Petitioner From Attachment Before Judgment.

Petitioner is an instrumentality of the Government of the United States, and is immune from interference in the conduct of its business and the performance of its functions, through action like that attempted by the court below, in summarily impounding petitioner's property, before final judgment, by attachment, garnishment or otherwise. Petitioner relies upon the doctrine established by this Court in the case of *McCulloch* v. *Maryland*, 4 Wheat. 316, and reaffirmed in *Osborn* v. *United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 33, 34; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290, and numerous other cases.

The decision below violates the rule stated by this Court in the case of *First National Bank* v. *California*, 202 U. S. 366, relative to the necessity of freedom on the part of a Federal banking corporation from attempted control of the conduct of its affairs on the part of a State.

Petitioner believes that interference in the conduct of its affairs by means of attachment or garnishment before judgment would be unlawful, even if attempted by a court of the United States. (*McCarthy* v. *U. S. Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923, cert. denied, 485 U. S. 547; *Moscow Hardware Co.* v. *Colson*, 158 F. 199; *Pringle* v. *Guild*, 118 F. 655.)

Suits Against a Federal Land Bank.

The Supreme Court of Arkansas erred in holding that Section 4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of the immunity of a Federal land bank from attachment or garnishment before judgment. There is no indication of Congressional intention to waive such immunity, in the provision that a Federal land bank may "sue and be sued, complain, interplead and defend, in any court of law or equity, as fully as natural persons." An intention to waive a sovereign right must be unmistakably shown in the terms of an Act of Congress. (*Savings Bank* v. *United States*, 19 Wall. 239. See also *Moscow Hardware Co.* v. *Colson*, 158 F. 199, 201.)

Congress empowered the bank to sue, and granted a reciprocal privilege to the public. This grant is made in general terms, and must be construed in the light of all provisions of the Act. It does not purport to prescribe the process by which the bank or its adversary may be haled into court, or to define the privileges and immunities of either party. The conclusion reached by the Supreme Court of Arkansas on this point is similar to a ruling that the bank could obtain a judgment against an infant or a lunatic by bringing him into court without a guardian.

Federal Corporations.

The Supreme Court of Arkansas erred in holding that this petitioner is a "foreign corporation." Petitioner exists and operates by virtue of an act of the Congress of the United States, and is authorized by its charter to do business in several States, including the State of Arkansas. Petitioner is a national corporation, with no State citizenship (*Bankers' Trust Co.* v. *Texas and Pac. Ry.*, 241 U. S. 295).

A national corporation is not "foreign" to any State where it is permitted by law to do business. The Federal Farm Loan Act, under which this petitioner was created, is a law of Arkansas. This Court has held, in the case of *Claflin* v. *Houseman*, 93 U. S. 130, 136 that:

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty."

This petitioner cannot be included within the statutory definition of a foreign corporation, which was relied on by the court below:

> "A 'foreign corporation' is one created by the laws of some other State or country." (C. & M. Dig. 9743.)
> "The words 'other country' signify any part of the world out of this State." (C. & M. Dig. 9744.)

Petitioner has been unable to discover any case where this Court has passed upon the applicability, to a national corporation, of State laws relative to foreign corporations. Petitioner invites the attention of the Court to a leading case on this subject, holding that a national corporation is not foreign to a State where it is permitted to do business, *Com.* v. *Texas & Pac. Ry. Co.*, 98 Pa. St. 90; to a case recently decided by the Circuit Court of Appeals for the Ninth Circuit, *Stewart* v. *Atl. National Bank of Boston*, 27 F. (2d) 222, 228; and also to the case of *Leggett* v. *The Federal Land Bank of Columbia*, 204 N. C. 541. Under the rule of these cases, petitioner is not a foreign corporation within the definition of that term as contained in the statutes of the State of Arkansas. Petitioner believes that it could not constitutionally be included within the provisions of State statutes relative to foreign corporations.

Conclusion.

In conclusion, it is respectfully submitted that the questions of law raised by this case, arising under the Constitution and statutes of the United States, are of fundamental importance to this petitioner, to the other eleven Federal land banks, and to all corporate instrumentalities of the United States, and that the public interest will be served by a determination of these questions by this Court.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

BRIEF OF PETITIONER.

I. Opinion Below.

The opinion of the Supreme Court of Arkansas (R. 14) and the order denying an application for a rehearing (R. 18) have not as yet been reported in the official reports of that court, but both of said decisions are reported in 74 S. W. (2d) 222.

II. Jurisdiction of This Court.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code (28 U. S. C. 344 (b)). The rights,

privileges, and immunities especially set up in claim by the petitioner are based upon and governed by the Constitution of the United States and by an Act of Congress approved July 17, 1916, and Acts amendatory thereof, known and cited as the Federal Farm Loan Act (12 U. S. C., Ch. 7) [1].

The Supreme Court of Arkansas has power to issue a writ of prohibition under Art. VII, Sec. 4 of the State Constitution, which reads, in part, as follows:

> "The Supreme Court, except in cases otherwise provided by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions as may from time to time be prescribed by law (a). It shall have a general superintending control over all inferior courts of law and equity; and, in aid of its appellate and supervisory jurisdiction, it shall have power to issue writs of error and supersedeas (b), certiorari, habeas corpus, prohibition, mandamus and quo warranto (c), and, other remedial writs (d), and to hear and determine the same. • • • "

The decision of the Supreme Court of Arkansas denying a writ of prohibition is a final judgment reviewable by this Court. (*Missouri ex rel. St. Louis, etc., Ry.* v. *Taylor*, 266 U. S. 200; *Bandini Petroleum Co.* v. *Superior Court of State of California*, 284 U. S. 8.)

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[1] For the convenience of the court, petitioner has filed with the clerk copies of a compilation of the Federal Farm Loan Act and of the laws relative to Federal agencies for farm credit, published by the Farm Credit Administration. This compilation is in the form of two pamphlets, one relating to long-term credit and the other to short and intermediate-term credit. The statutes are set forth in these pamphlets in accordance with the codification thereof, in Title 12 of the United States Code.

The petition for writ of certiorari was filed in this Court on December 22, 1934, within three months after entry of final judgment below. Although the Supreme Court of Arkansas rendered its decision on June 18, 1934 (R. 14) denying the petition for writ of prohibition, such decision did not become final until September 24, 1934 (R. 18), when that court denied the petitioner's application for a rehearing (*Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164).

III. Statement of the Case.

Petitioner is one of the twelve Federal land banks chartered by the Federal Farm Loan Board under the provisions of the Federal Farm Loan Act (12 U. S. C. 641 *et seq.*; 39 Stat. 360, *et seq.*) Petitioner is authorized by its charter to do business in the States of Arkansas, Illinois and Missouri. Petitioner maintains its office in the City of St. Louis, in the State of Missouri.

The respondent, A. B. Priddy, is a judge of the Circuit Court in and for Pope County, Arkansas. A resident of Pope County, one Briscoe, brought suit in that court against this petitioner, for recovery of a sum alleged to be owing under a contract (R. 4). A writ of attachment was issued by the Circuit Court, as prayed in the petition, and a summons, directed to the defendant, was served upon its tenant on the property (R. 8).

In issuing the attachment above mentioned, the Circuit Court apparently proceeded under the provisions of Section 494, Crawford and Moses Digest of the Statutes of Arkansas, although no reference is made to this section in the decision of the Supreme Court. This section provides that:

> "The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the

> property of the defendant . . . . In an action for the recovery of money . . . where the action is against a defendant . . . who is a foreign corporation or nonresident of the State . . . ."

Following the attachment, constructive service of process was attempted to be made upon this petitioner under the following provisions of Sections 1159 and 1160 of Crawford and Moses Digest of the Statutes of Arkansas:

> "Section 1159. Warning order. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action . . . that the defendant is:
>
> First. A foreign corporation, having no agent in this State; or,
>
> Second. A nonresident of this State . . . the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order . . . ."

> "Section 1160. Publication. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. . . . ."

The statutes of Arkansas further provide (C. & M. Dig. Sec. 1162) that—

> "A defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

A warning order was issued by the Circuit Court in reliance upon the above quoted provisions, and jurisdiction was assumed over the case (R. 8-11).

Petitioner entered its special and limited appearance in said action and moved the court to quash the service, dissolve the attachment and dismiss the suit upon the grounds stated in said motion (R. 6). This motion was submitted to and overruled by the trial court on April 2, 1934 (R. 8). Petitioner thereupon filed an original petition in the Supreme Court of the State of Arkansas for a writ of prohibition to be directed to the Honorable A. B. Priddy as Judge of the Circuit Court in and for Pope County, Arkansas, respondent herein, to prohibit him as such Circuit Judge from assuming jurisdiction of said action, and to prohibit him as such judge from making or entering any order, judgment or decree in or about said action (R. 1). This petition for writ of prohibition was heard and considered by the Supreme Court of the State of Arkansas, and an opinion and decision were rendered by that court on June 18, 1934, denying said petition (R. 14).

In due time petitioner filed a motion in the Supreme Court of the State of Arkansas, praying for rehearing of its said petition for a writ of prohibition (R. 16). Said motion for rehearing was denied by said court on September 24, 1934 (R. 18). The order of the Supreme Court of Arkansas, denying this bank's petition for rehearing of said petition, constitutes a final judgment of the highest court of said State. *Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164.

IV. Proceedings in This Court.

On December 22, 1934, petitioner applied to this Court for a writ of certiorari to review the decision of the court below. The writ was granted by an order of this Court entered on February 4, 1935 (R. 18). The prayer for review was based upon the following statement of the specification of errors relied upon by the petitioner.

V. Assignments of Error.

1. The court erred in failing to hold that petitioner, being a Federal banking corporation and an instrumentality of the Federal Government, is immune from interference in the performance of its functions by the attachment or garnishment of its property.

2. The court erred in holding that Section 4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of immunity from attachment or garnishment before judgment, in providing that Federal land banks may "sue and be sued * * * as fully as natural persons."

3. The court erred in holding that a Federal land bank is a "foreign corporation" in any State of its district.

VI. Summary of Argument.

1. A Federal banking corporation, an agency and instrumentality of the Federal Government, is immune from interference in the performance of its functions by the attachment or garnishment of its property.

Buchanan v. *Alexander*, 4 How. 20; *Earle* v. *Pennsylvania*, 178 U. S. 449; *Earle* v. *Conway*, 178 U. S. 456; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738; *Domenech, Treasurer of Puerto Rico* v. *National City Bank of New York* (No. 386).

2. Under the provisions of the Federal Farm Loan Act (12 U. S. C. § 641 *et seq.*), a Federal land bank operates as an agency and instrumentality of the Federal Government and is, therefore, entitled to immunity from attachment and garnishment.

Smith v. *Kansas City Title and Trust Company*, 255 U. S. 180; *Federal Land Bank* v. *Gaines*, 290 U. S. 326; *Krauthoff* v. *Kansas City Joint Stock Land Bank*, 23 F. (2d) 71

(certiorari denied), 280 U. S. 583; *Barnes* v. *District of Columbia*, 91 U. S. 540, 544; *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554; *Dollar Savings Bank* v. *United States*, 19 Wall. 227 (l. c. 239).

3. The capacity to "sue and be sued" contained in Section [illegible] of the Act (12 U. S. C., § 676) does not constitute a waiver of immunity from attachment and garnishment.

Brown v. *Duchesne*, 19 How. 183; *District of Columbia* v. *Woodbury*, 136 U. S. 450; *Chicago & N. W. Ry.* v. *Durham Co.*, 271 U. S. 251; *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351, 356; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation* (App. D. C.), 53 F. (2d) 223; *Earle* v. *Pennsylvania* and *Earle* v. *Conway*, *supra*.

4. A Federal land bank is a "national corporation" and as such is not a *foreign corporation* within any State of the Union for the purpose of a State statute providing for constructive service upon foreign corporations.

Bankers' Trust Co. v. *Texas and Pac. Ry.*, 241 U. S. 295; *First National Bank* v. *California*, 262 U. S. 366; *Commonwealth* v. *Texas and Pac. Ry. Co.*, 98 Pa. St. 90; *Leggett* v. *Federal Land Bank of Columbia*, 204 N. C. 151; 167 S. E. 557.

VII. ARGUMENT.

1. The property and funds of the Federal Government and of its agencies and instrumentalities are immune from attachment and garnishment.

Since the case of *Buchanan* v. *Alexander*, 4 How. 20, was decided by this Court in 1846, it has been established without question that creditors may not divert public money or seize public property "by process of attachment." It has been equally well established since that time that cred-

itors may not divert public funds which "may be placed in the hands of an agent for disbursement".

In that case, this Court held that the creditors of certain seamen could not levy writs of attachment upon money due the seamen for wages, in the hands of the purser of a vessel of the United States Navy. In its opinion, the court stated:

> "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the army and of the navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it, At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service.
>
> "*The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended.* So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen.
>
> "We think the question in this case is clear of doubt, and requires no further illustration." (Italics added.)

A "further illustration", which the court may have had in mind, is the age-old doctrine that the sovereign may not

be sued without its consent. Since the sovereign may not be sued, it follows logically that the sovereign's property may not be seized by a court. And although it may consent to be sued, it does not consent to the seizure of its property, unless further and specific consent be given by statute (*Earle* v. *Pennsylvania*, 178 U. S. 449, *Earle* v. *Conway*, 178 U. S. 456).

The decision in the *Buchanan* case established a rule which has never been modified, namely, that the functions of the Federal Government may not be "defeated by State process or otherwise". This rule was unquestionably based upon the principles previously announced in the famous case of *McCulloch* v. *Maryland*, 4 Wheat. 316, wherein this Court said: that the Constitution of the United States prohibits interference with the execution of powers granted to the Federal Government, whether such powers be exercised by a department of the Government, or by its duly appointed agents or instrumentalities. That principle has been reaffirmed in *Osborn* v. *United States Bank*, 9 Wheat. 738, and in a long line of cases. The most recent application of the rule is to be found in the decision handed down by this Court on February 4, 1935, in *Domenech, Treasurer of Puerto Rico* v. *National City Bank of New York*, (No. 386). In holding that the Government of Puerto Rico has no authority to tax personal property or branches of national banks, the court said:

> "• • • like a state though for a different reason, such an agency [territory] may not tax a *federal instrumentality*. A state, though a sovereign, is precluded from so doing because *the Constitution requires that there be no interference by a state with the powers granted to the federal government.* • • • a territory of a possession may not do so because *the dependency may not tax its sovereign.* True the Congress may consent to such taxation; *but the grant to the Is-*

> *land of a general power to tax should not be construed as a consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice.''* (Italics added.)

The District Court in the case of *McGrew* v. *McGrew*, 38 F. (2d) 541, 544, also followed the rule announced in the *Buchanan* case as follows:

> "It is conceded that the defendant's salary as a government employee cannot be reached by attachment or other process issued in an action at law. To permit this 'at all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended.' Mr. Justice McLean in *Buchanan* v. *Alexander*, 4 How. 20, 11 L. Ed. 857. The reason for this rule applies with equal force to a court order compelling a public officer or employee under the penalities of the law to pay over his salary, or part thereof, as and when received by him, to be credited upon a judgment theretofore recovered at law against him. The result of such a proceeding, if sustained, would indirectly subject the public service to equal embarrassment with that resulting from the service of an attachment or garnishment at law, and the creditor would accomplish indirectly what he is forbidden to do directly."

We respectfully submit that, under and by virtue of the provisions of the Federal Farm Loan Act and the acts which should be read in conjunction therewith, the Federal land banks were created and function as agencies and instrumentalities of the Federal Government. They are in fact, incorporated bureaus of the Government itself. A re-

view of the provisions of the statutes in question will demonstrate the correctness of this statement.

The Federal Farm Loan Act.

On May 14, 1916, the bill, which later became the Federal Farm Loan Act, was passed by the Senate and referred to the House. The bill was taken up by the House and sent to the Committee on Banking and Currency for consideration. Later the committee reported the bill, with amendments. The report described in great detail the purposes and provisions of the proposed legislation. Under the caption "Government Control", the report stated: "The creation of this board [The Federal Farm Loan Board] assures to the Government the general supervision and control of the entire system." (H. R. Rpt. No. 630, 64th Cong. 1st Sess.) The bill was finally passed and was later approved on July 17, 1916.

Fifteen years ago this Court passed upon the constitutionality of the Act in the case of *Smith* v. *Kansas City Title and Trust Company*, 255 U. S. 180. The court concluded (l. c. 211) that the "creation of these banks, and the grant of authority to them to act for the Government as depositaries of public moneys and purchasers of Government bonds, brings them within the creative power of Congress . . . ." The court pointed out also that the Act is entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, *to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes.*" (Italics added.)

Section 1 of the Act (12 U. S. C. § 641) provided originally that "Its administration shall be under the direction

and control of the Federal Farm Loan Board hereinafter created." By Executive Order No. 6084, "all the powers and functions of the Federal Farm Loan Board are transferred to and vested in the farm loan commissioner [now known as land bank commissioner], subject to the jurisdiction and control of the Farm Credit Administration as herein provided." We shall, therefore, refer throughout this brief to the governmental body charged with the administrations of the Act as the "Farm Credit Administration", and all quotations from the Act will follow the arrangement thereof in the United States Code.

Section 3 of the Act (12 U. S. C. §§ 651, 654, 655) originally provided for the establishment, at the seat of Government, in the Department of the Treasury, of a bureau under the general supervision of the Federal Farm Loan Board, *charged with the execution of this Act and of all acts amendatory thereto.* The extent to which the Government retained control of the execution of the Act and the direction of the administration of the whole system, is forcibly demonstrated by a brief recital of the powers of the Farm Credit Administration.

The following references are to sections of Chapter 7, Title 12, U. S. C.:

The Administration is given the power to approve or disapprove the form and term of any first mortgage taken by the banks of the System, (§ 642); to appoint registrars, appraisers, and examiners who are declared by the Act to be public officials (§ 656); to adopt rules and regulations not inconsistent with law as it may deem necessary for the efficient execution of the provisions of the Act (§ 655); to divide the United States into twelve districts and establish Federal land banks in each district and to establish branches in the territorial and insular possessions (§§ 671, 672); to prescribe the form and terms of the charters

of such institutions, subject to certain statutory requirements (§ 674); and "to direct such changes in or additions to any such organization certificate, not inconsistent with this subchapter, as it may deem necessary or expedient". (§ 675.)

At this point it is significant to note that the stockholders of Federal land banks are not given the power to adopt changes or make amendments to its articles of incorporation.

The Farm Credit Administration is further given authority to approve or disapprove by-laws adopted by the directors of the banks (§ 676); to appoint four of the seven directors of these institutions, to approve the compensation received by such directors and the other officers and employees of each bank (§ 683); to organize and charter national farm loan associations, through which loans are made by Federal land banks (§ 711); to grant or refuse to grant a charter to such associations; to authorize the making of direct loans in territories where associations have not been formed, or where associations have become inactive on account of financial difficulties, or are in process of liquidation (§ 723); to approve fees and charges paid by applicants for loans and borrowers (§ 723); to disapprove the acceptance of any application for a loan received by a Federal land bank (§ 735); and, through appraisers appointed by it, fix the maximum amount of any loan which may be made by these institutions (§ 752); and to direct and prescribe the way in which appraisals shall be made (§§ 754, 755).

No Federal land bank may issue or sell farm loan bonds without first obtaining the approval of the Farm Credit Administration (§ 781); all first mortgages and Government bonds tendered as collateral for farm loan bonds are subject to the approval of the Administration (§ 842); the

collateral is held by a public officer appointed by the Administration (§§ 851-857); the Administration is authorized to prescribe the mode and terms of payment of such bonds (§ 862); the bonds must be attested by the Land Bank Commissioner (§ 874), and, upon the failure of any bank to pay its proportion of the interest and principal due upon bonds issued by it or on its behalf, the Administration is authorized to call upon the other banks for the amount necessary to make such payments (§ 882).

The Administration is authorized also to call upon any bank for additional security for the bonds previously issued by it (§ 881 (b)); payments of principal on mortgages and other collateral pledged as security for bonds are made to and held by registrars who are under the direction and control of the Administration (§ 897); such first mortgages, and the farm loan bonds they are pledged to secure, are declared by the Act to be instrumentalities of the Federal Government (§ 931); and the bonds are made a lawful investment of fiduciary and trust funds and may be accepted as security for all public deposits (§ 941).

Joint stock land banks created under the Act, now in the process of liquidation, were chartered only with the consent and approval of the Farm Credit Administration (§ 811); the reserves of Federal and joint stock land banks and national farm loan associations may be invested only with the approval of the Administration (§§ 901, 914); and dividends may be paid by the bank only with its approval (§ 902).

Periodic examinations of the land banks and associations are made by public officials appointed by and under the direction of the Administration (§ 951). In case of insolvency of any institution incorporated under the Act the Administration is given power to appoint receivers and through such receivers to sell its assets and pay its liabilities

(§§ 961-964), and no bank or association may go into voluntary liquidation without the Administration's approval (§ 965).

Certain specific powers of the Farm Credit Administration are set forth in section 831 as follows:

> (1) To organize and charter banks and loan associations:
>
> (2) To review and alter interest rates; (3) to grant or refuse authority to issue farm loan bonds; (4) to make rules and regulations as to charges on loans; (5) to require reports of condition from and to examine banks and associations; (6) to prescribe form and terms of bonds and surety bonds; (7) to suspend or remove registrars, appraisers and examiners; and
>
> "(*i*) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.
>
> "(*j*) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this sub-chapter."

A Federal Land Bank is an Instrumentality of the Government.

The foregoing provisions of the Act indicate that the Federal land banks were organized by Government officials pursuant to Congressional mandate: "The Farm Credit Administration *shall* establish in each Federal land bank district a Federal land bank" (italics added) (§ 672). These banks must operate under the close scrutiny and regulation of the Government. Government appointed directors have always had a voice in the routine management of the bank, and now have the controlling voice (§§ 678, 681).

The Act imposes rigid restrictions on the business of each of these institutions. They may not engage in a gen-

eral banking business but may lend money and extend credit only for specific uses and definite purposes (§§ 751, 791). Subject to these statutory limitations, the only business which a Federal land bank may lawfully transact is the making of long-term loans upon the security of mortgages which are declared to be instrumentalities of the Government of the United States; the issuing of bonds which are also declared to be similar instrumentalities, together with the business necessarily incident thereto; the banks may be designated by the Secretary of the Treasury as depositaries of public moneys; the rendering of services as financial agents of the Government and depositaries of public moneys; and the rendering of services which may be required of them by the Land Bank Commissioner in connection with the execution of the provisions of the Emergency Farm Mortgage Act of 1933 (§ 1018; 48 Stat. 49).

With the exception of real estate, the property, assets, and income of Federal land banks are specifically declared to be exempt from taxation (§ 931). As pointed out by this Court, in the cases of *Clallam County* v. *United States*, 263 U. S. 341, 344, and of *McCulloch* v. *Maryland*, 4 Wheat. 316, 426, this declaration was not necessary in order to exempt a Federal instrumentality from the payment of taxes. In fact, this was pointed out during the debates in the Senate (relative to the constitutionality of the exemption) in response to questions propounded on the floor when the legislation was being considered (53 C. R. 6967). On the other hand, if the Act had not provided "except taxes upon real estate" it would have been beyond the power of the states to tax such property.

In January, 1932, the Congress gave the banks further financial assistance by authorizing the Government to purchase additional stock. Under the provisions of the Act, which was approved on January 23 of that year, (47 Stat.

12) the Government subscribed to $125,000,000 of new capital, $25,000,000 of which was earmarked for use by the banks in connection with the extension of defaulted loans (12 U. S. C. § 781 (Tenth)).

By an amendment to the same section, approved on June 16, 1933, (§ 781, Tenth; 48 Stat. 273), the Secretary of the Treasury was authorized to subscribe "to the paid-in surplus" of the Federal land banks in the sum of $50,000,000, for the purpose of granting additional extensions of interest and principal payments due or to become due from their borrowers. An additional $15,000,000 was made available by the same Act in order to permit a reduction in the rate of interest paid by borrowers on existing loans.

By the Federal Farm Mortgage Corporation Act of January 31, 1934 (12 U. S. C. 1020, *et seq;* 48 Stat. 344, *et seq.*), Congress has made further provisions for assistance to the Federal land banks in carrying out, as instrumentalities of the Government, its program for relieving and refinancing the burden of farm debt, which had become a national menace. By the terms of this act, Congress established the Federal Farm Mortgage Corporation, with a capital of $200,000,000 owned by the Government; and authorized the Corporation to issue and have outstanding bonds, fully and unconditionally guaranteed by the United States, to the extent of $2,000,000,000. These bonds may be issued in amounts equal to the assets of the Corporation, including assets represented by bonds of the Federal land banks acquired by the Corporation in exchange for an equal face amount of its bonds.

The banks are also acting as agents of the Federal Farm Mortgage Corporation for the making of direct loans to farmers under the Emergency Farm Mortgage Act of 1933 (12 U. S. C. 1016, *et seq.*)

Of course, in the performance of its specific powers, a Federal land bank necessarily exercises many implied and incidental powers. For example, in connection with the real and personal property which it is authorized to acquire in the liquidation of defaulted loans, it must and does engage in the repair, renovation and operation of acquired real estate; and in the liquidation of personal property similarly acquired. However, it may and has happened that these incidental powers are exercised by the bank as trustee, in handling the proceeds of mortgages previously deposited with the Farm Loan Registrar, a public official, as collateral security for bonds. For the most part, the assets and moneys of a Federal land bank are earmarked. Only a small proportion of these assets and moneys are "free", that is, not impressed with an actual trust, or held for the performance of a particular public function.

Practically at all times a bank has fieldmen moving about in the various States of its district, making investigations and reports, collecting sums of money due from borrowers and others, and performing miscellaneous duties. Collections made by these fieldmen include installments of principal and interest on farm mortgage loans which are pledged as collateral security for bonds; and, as previously stated, the principal portion of such installments is impressed by law with a trust, and must be accounted for to the Farm Loan Registrar (12 U. S. C. § 897).

The bank is constantly engaged in making loans, and must send into the field the bonds or drafts which are used in the closing of such loans. Under the law, the bank may make these loans only for specific purposes, and each borrower must covenant in his mortgage to use the proceeds of his loan for such purposes. The loan funds are disbursed either through national farm loan associations (in the manner considered by this Court in *Federal Land Bank* v.

Gaines, 290 U. S. 326, or through a loan closing agent selected by the bank. If loan funds held for disbursement by the bank or the association were subject to attachment or garnishment, the purposes of the Farm Loan Act could be defeated in either of two ways:

1. Attachment of the loan proceeds while in the hands of the bank's agent, in a suit against the bank as principal creditor, would cause at least a temporary delay in the closing of the loan, and the element of time is frequently of the utmost importance—as in the case of a farmer who obtains a loan for the purpose of redeeming his property from foreclosure sale;

2. Garnishment of the loan proceeds, in the hands of the bank's closing agent, or of the local national farm loan association in a suit against the borrower's principal creditor, might deflect the loan proceeds from the purposes stipulated in the loan application and the bank's approval thereof, in direct violation of the provisions of the Federal Farm Loan Act, and such garnishment might even operate to apply these funds to a use for which they could not lawfully have been loaned in the first instance.

We do not cite these examples in support of a plea of practical necessity or convenience. On the contrary, we believe that these typical instances of practical routine are helpful in considering the legal question that is paramount in this case. They illustrate the purposes which Congress sought to accomplish in establishing the Federal land bank system, and the character of the agencies which it established as the means of effecting those purposes. When we examine these daily, routine transactions, we find that the Federal land bank is acting as an instrument of the Government and not a free agent, that its daily work is the execution of a series of public duties revolving about the acceptance and issuance and servicing of the mortgages

and bonds which are "instrumentalities of the Government of the United States", and which may be employed only for specific public ends.

The question of Federal agency was thoroughly briefed on behalf of a Federal land bank in connection with the case of *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180, where this Court held the Act to be constitutional. Throughout those briefs, the Federal land banks were referred to as "Federal instrumentalities", and at one point it was stated:

> "The Federal Land Banks, not only as they now exist as *mere incorporated bureaus of the Government*, directed in all their activities by Government officials, but also as they will exist after the Government stock has been retired and after the bonds held by the Treasury have been sold or paid, constitute facilities and instrumentalities for the use of money for a public purpose of great importance; and it was clearly within the authority of Congress, either to appropriate money or to issue Government bonds and apply the proceeds directly through the Treasury Department to the end in view, or to create these facilities and instrumentalities as appropriate means to the same end." (Italics added.)

When the decision was handed down the creation of the land banks as "Federal agencies" was referred to by Mr. Justice Day in the majority opinion of this Court (page 210) as follows:

> "But whether technically banks, or not, these organizations may serve the governmental purposes declared by Congress in their creation. Furthermore, these institutions are organized to serve as a market for United States bonds. Not less than 5% of the capital of the Federal Land Banks, for which stock is outstanding to Farm Loan Associations, is required to

be invested in United States bonds. Both kinds of banks are empowered to buy and sell United States bonds."

The character of the banks as Federal instrumentalities for a purpose relating to the general welfare was recognized by this Court in the case of the *Federal Land Bank of Columbia* v. *Gaines*, 290 U. S. 326, where it was stated:

> " • • • both the petitioner [Federal land bank] and the [national farm loan] association were, in a broad and general sense, public agencies or instrumentalities to carry out a policy of the Government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings."

In the case of *Krauthoff* v. *Kansas City Joint Stock Land Bank*, 23 F. (2d) 71, (certiorari denied) 280 U. S. 583, the Circuit Court of Appeals for the Eighth Circuit stated: "The [joint stock land] bank was a Federal agency".

Since the decision of the *Smith* case, the Federal land banks have passed through the stage of development which was anticipated in the opinion. The Government stock was retired, being replaced by capital furnished by associations of farmer-borrowers; the bonds found a public market, and Treasury purchases of those bonds were limited to amounts desired for the investment of public funds. This cycle was followed, as the court knows, by a period commencing in 1932 and extending through the present time, during which the Government has utilized the Federal land banks as fiscal agencies, to a greater extent than was ever before contemplated, for a public purpose of paramount importance—to arrest the further distintegration of the essential industry of agriculture. The measures recently taken by the Government, through the Federal land banks, show that Congress made use of the Government agencies already

available, for Governmental purposes. Such use of these facilities did not alter their inherent character, but merely enlarged the functions of the institutions for the purpose of meeting a national emergency.

We believe that this discussion of the functions performed by Federal land banks, under authority of the Acts of Congress, shows that within certain well defined limits they are actually carrying on the business of the Government. Whether the functions of these public corporations may be curtailed or enlarged in the future is immaterial. In the case of *Barnes* v. *District of Columbia*, 91 U. S. 540, 544, this Court said:

> "A municipal corporation, in the exercise of all of its duties, including those most strictly local or internal, is but a department of the State. The Legislature may give it all the powers such a being is capable of receiving, *making it a miniature State within its locality.* Again: it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality. We do not regard its acts as sometimes those of an agency of the State, and at others those of a municipality; but that, its character and nature remaining at all times the same, it is great or small according as the Legislature shall extend or contract the sphere of its action." (Italics added.) See also: 12 R. C. L. § 85; *Brooks Hdw. Co.* v. *Greer*, 111 Me. 78; 10 *Fletcher Cyc. Corp.* § 4776.

With respect to another class of public corporations, namely, national banks, which are privately owned, this Court held in the case of *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554, that it was beyond the power of a State to interfere with their functions by legislative or judicial

action, except "so far as the lawmaking power of the Government may permit". In this connection the court said:

> "The right of Congress to determine to what extent a state court shall be permitted to entertain actions against national banks and how far these institutions shall be subject to state control, is undeniable. National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character, and, within constitutional limits, are subject to the control of Congress and are not to be interfered with by state legislative or judicial action, except so far as the lawmaking power of the Government may permit."

In view of the rule laid down by this Court in the *Van Reed* case it is appropriate at this time to consider whether under the provisions of the Farm Loan Act Congress has given specific permission to creditors to attach or garnishee property or funds of a Federal land bank.

2. The "sue and be sued" clause of the Federal Farm Loan Act does not constitute a waiver of immunity from attachment or garnishment.

Section 4 of the Federal Farm Loan Act provides that a Federal land bank may "sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons". (12 USC § 676.) We respectfully submit that this stereotyped provision does not constitute a waiver of the inherent immunity of a Federal instrumentality from seizure of its property by summary process. An intention to waive a sovereign right of the Federal Government must be unmistakably shown in the terms of an Act of Congress. This rule was announced by Mr. Justice Strong speaking for this Court in the case of the *Dollar*

Savings Bank v. *United States*, 19 Wall. 227 (l. c. 239) as follows:

> "It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. *The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests.* He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this government, and it has been applied frequently in the different States, and practically in the Federal courts." (Italics added.)

Section 4 of the Act merely empowers the banks to sue and gave a reciprocal privilege to the public. This grant is made in general terms and must be construed in the light of all of the provisions of the Act. (*Brown* v. *Duchesne*, 19 How. 183.) It does not purport to prescribe the process by which the bank or its adversary may be hailed into court, or to define the privileges and immunities of either party. Mr. Justice Taney in delivering the opinion in the case of *Brown* v. *Duchesne, supra*, said:

> " • • • And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning.
>
> "Neither will the court, in expounding a statute, give to it a construction which would in any degree disarm the Government of a power which has been confided to it to be used for the general good—or which would

> enable individuals to embarrass it, in the discharge of the high duties it owes to the community—unless plain and express words indicated that such was the intention of the Legislature."

There are no "plain and express words" in the Farm Loan Act which permit creditors to attach the property of these sovereign instrumentalities. As this Court indicated in the case of the *District of Columbia* v. *Woodbury*, 136 U. S. 450, it did not regard the liability of a public corporation to be sued as synonymous with its liability to summary process of execution. Se also *Brooks Hdw. Co.*, 111 Me. 78.

The statutes providing for the government of the District of Columbia, passed by the Congress under its constitutional power to exercise exclusive legislative authority over the seat of the Federal Government, provided in part as follows:

> "The District of Columbia is that portion of the territory of the United States ceded • • • for the permanent seat of the Government of the United States • • • ." (R. S. D. C. § 1, June 11, 1878).
>
> "The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, *sue and be sued, plead and be impleaded* • • • ." (Italics added.) (R. S. D. C. § 2, June 11, 1878; 20 Stat. 102.)

Despite the privilege given the public to sue and implead the District Government, a review of a number of cases, which have been cited with approval by this Court, will show that it has been held that the District of Columbia is not subject to attachment and garnishment. This approval was indicated in *Chicago & N. W. Ry.* v. *Durham Co.*, 271 U. S. 251. In that case this Court was considering the

right of a creditor to garnishee a public carrier. In the course of his opinion Mr. Justice Brandeis said:

> "Thus, a garnishee may be under no liability, because the property could have been reached by direct levy. He may be under no liability because of the nature of the claim sought to be enforced, or because of the character of the plaintiff, of the principal defendant, of the garnishee,[6] or of the property sought to be reached."

Among the cases cited in support of this statement (Footnote No. 6) were the following:

> [6]*Buchanan* v. *Alexander*, 4 How. 20; *Fischer* v. *Daudistal*, 9 Fed. 145; *Pringle* v. *Guild*, 118 Fed. 655; *Moscow Hardware Co.* v. *Colson*, 158 Fed. 199; and *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351.

In the case of the *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351, 356, the Court of Appeals of the District of Columbia held, on the authority of *Buchanan* v. *Alexander, supra*, that an equitable garnishment could not "bind the money" of the District of Columbia due a contractor.

> "This is an attempt by equitable garnishment to bind the money due the contractor Thomas, in the hands of the municipal corporation of this District. This, we think, cannot be done. If it could be done in this instance, it could be done in hundreds of other cases; and the consequences would be, that the municipal government would constantly be liable to the obstruction and embarrassment in the administration of municipal affairs, that such claims and resulting litigation would necessarily produce. In the absence of express legislation making the municipal corporation liable to such proceeding, both reason and public policy forbid it. [The court apparently did not believe that such 'express legislation' was contained in the authorization to 'sue and be sued' which, at the time of this decision, was contained in R. S. D. C. § 2]. * * *

"'A municipal corporation cannot be properly turned into an instrument or agency for the collection of private debts. It exists simply for the public welfare, and cannot be required to consume the time of its officers or the money in its treasury in defending suits, in order that one private individual may the better collect a demand due from another. A private corporation must assume the same duties and liabilities as private individuals, since it is created for private purposes. *But a municipal corporation is a part of the government. Its powers are held as a trust for the common good.* It should be permitted to act only with reference to that object, and should not be subjected to duties, liabilities or expenditures merely to promote private interests or private convenience.'" (Quoted by the court from *Merwin* v. *City of Chicago*, 45 Ill. 133.) (Italics added.)

A further statement of this rule, with citations to Federal and State cases, is found in *Moscow Hardware Company* v. *Colson*, 158 F. 199, 201, (also cited by this Court in *Chicago & N. W. Ry.* v. *Durham, supra*). In deciding that the University of Idaho, an instrumentality of the State, was immune from garnishment, the Circuit Court found no ruling by the Idaho courts, and therefore adopted the rule of the *Buchanan* case, stating (l. c. 201):

"It is undoubtedly true that every state has the right to subject all persons to garnishment process and to include in the term 'persons' public as well as private corporations; but, by reason of the injury which the courts have generally held would accrue to public interests by permitting the state and its agencies to be garnished, the intention of the Legislature to confer such right of garnishment upon a creditor will not be inferred from general language, *but the intention of the Legislature must clearly appear. This is a rule of statutory construction prevailing not only with regard to attachment statutes, but to all statutes which would operate to encroach upon what are commonly*

> *referred to as 'sovereign rights,'* or interfere with the orderly performance of public functions by those agencies established for the administration of government.

In *Savings Bank* v. *United States*, 19 Wall. 239, 22 L. Ed. 80, the court said: (See page 24 of this brief.)

The same rule was held to be applicable to a corporate agency of the United States, in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation* (App. D. C.) 53 F. (2d) 923. In that case a writ of attachment and garnishment was served upon the Fleet Corporation in aid of the execution of a judgment obtained against one of its employees. In holding this writ to be invalid, even though the Corporation could be sued like a private corporation, the court said:

> "All • • • terminals and real estate were the property of the United States and were operated by the Fleet Corporation as a public agency in the performance of certain administrative functions of the Government. The corporation is financed by the United States, the property operated by it belongs to the Government, and it functions as an instrumentality or department of the Government. Merchant Marine Act, 1920, c. 250, 41 Stat. 988; *Skinner & Eddy Corporation* v. *McCarl, Comptroller General*, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131; *Emergency Fleet Corporation* v. *Western Union Tel. Co.*, 275 U. S. 415, 48 S. Ct. 198, 72 L. Ed. 345; *Fleet Corporation* v. *Harwood*, 281 U. S. 519, 50 S. Ct. 372, 74 L. Ed. 1011."

In *Pacific National Bank* v. *Mixter*, 124 U. S. 721, and *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554, this Court also passed upon cases which involved attempts to levy attachments upon property of national banks before final judgment. In each of these cases the Court based its decision upon the statutory prohibitions, holding that "The

remedy is taken away altogether and cannot be used under any circumstances."

The statutory prohibition referred to in these cases is found in Section 5242 of the Revised Statutes (12 U. S. C., § 91) and reads as follows:

> "No attachment, injunction or execution, shall be issued against such association, or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court."

Section 5157 of the same chapter of the Revised Statutes (12 U. S. C., § 37) as follows:

> "The provisions of this chapter, which are expressed without restrictive words, as applying to 'national banking associations' or 'associations', apply to all associations organized to carry on the business of banking under any Act of Congress."

In view of this last quoted provision, a United States District Court for the Fourth Judicial District of Minnesota, in an unreported opinion held that since the banks of the Farm Loan System were organized to carry on the business of banking (12 U. S. C., § 811) that joint stock land banks were exempt from attachment and garnishment before judgment. (*Farms Company* v. *Southern Minnesota Joint Stock Land Bank,* No. 274, 516). Even though this Court should feel, as we do, that this provision of the National Banking Act is not applicable to Federal Land Banks, these institutions would nevertheless be exempt from garnishment on account of the well-established rule for which we are contending, and which was also referred to in the *Farms Company* case, namely, "the defendant is a governmental instrumentality and by virtue thereof is entitled to immunity from such ancillary process as is instituted by plaintiff. • • • the court feels • • • that the law

is established that the defendant being a Federal agency cannot be hampered by garnishment proceedings such as instituted by the ancillary proceedings above, in the absence of *express consent by or on the part of Congress.*". (Italics added.) The privilege to sue and be sued is not "express consent."

The statutory prohibition relative to the attachment of property of national banks was further considered by this Court in the case of *Earle* v. *Pennsylvania* and *Earle* v. *Conway*, 178 U. S. 449, 456. In these cases the Court held that the prohibition against attachments before judgment does not extend to money or property which the bank holds for the account of another. In the first of these cases (l. c. 454) the court stated:

> "Whatever may be the scope of [R. S.] section 5242, an attachment sued out against the bank *as garnishee* is not an attachment against the bank or its property, nor a suit against it, within the meaning of that section. It is an attachment to reach the property or interests held by the bank for others."

However, in both of these cases this Court held that no execution could issue upon a judgment against a national bank in a garnishment suit, where the bank either before or after the commencement of the proceeding had been placed in the hands of a receiver by the Comptroller of the Currency. In the first of these cases (l. c. 454), the court stated:

> "We must not * * * be understood as holding that the distribution of the bank's assets in the hands of the receiver could have been in anywise directly controlled by the state court or seized under an attachment or execution in the hands of any state officer. On the contrary, the direction in the statute that the receiver pay over all moneys realized by him from the

assets of the bank to the Treasurer of the United States, subject to the order of the Comptroller, furnished a rule of conduct for him which neither an order of nor any proceedings in the state court could affect, modify or change. The scheme of the statute relating to suspended national banks is that from the time of a bank's suspension all its assets, of whatever kind, as they are at the time of suspension, pass in the first instance, to the receiver, the proceeds thereof to be distributed by the Comptroller among those whose claims are proved to his satisfaction or are adjudicated by some court of competent jurisdiction."

In the second *Earle* case the court stated (l. c. 457):

"* * * such an attachment cannot create any lien upon specific assets of the bank in the hands of the receiver, nor disturb his custody of those assets, *nor prevent him from paying to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys coming to his hands or realized by him as receiver from the sale of the property and assets of the bank.* After the service of the attachment upon the receiver it became his duty to report the facts to the Comptroller, and it then became the duty of the latter to hold any funds coming to his hands through the Treasurer of the United States as the proceeds of the sale of the bank's assets subject to any interest which the plaintiff may have legally acquired therein as against his debtor under the attachment issued * * * in his favor in the state court." (Italics added.)

In this connection it will be recalled that a large part of the funds and property coming into the hands of a Federal land bank must also be received and held in trust for a Federal officer—the Farm Loan Registrar. (12 U. S. C., § 897.)

In law and in fact, therefore, a Federal land bank is always in a situation which is closely parallel to that of

a national bank in receivership. Its assets, for the most part, must be handled in accordance with specific direction of the Act, its entire business must be conducted subject to the close scrutiny and regulation of the Farm Credit Administration, and its normal business routine is the performance of public functions, in the execution of governmental purposes. In other words, the scheme of the statute relating to Federal land banks requires that their assets be free from control by State courts, in order that the directions of that statute may constitute the paramount rule of conduct for the officers of the bank.

For these and other reasons previously set forth in this brief, the attachment and garnishment of the property and funds of a Federal land bank are totally different from the situation presented in the cases arising in connection with the operations of the United States Shipping Board Emergency Fleet Corporation.

This Court pointed out in *The Lake Monroe* case, 250 U. S. 254, that vessels operated by or through the Fleet Corporation were in certain circumstances subject to seizure, in accordance with maritime laws, because Congress had expressly provided in the Shipping Act of 1916 that "vessels purchased, chartered, or leased from the Shipping Board, while employed solely as merchant vessels, should be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States were interested therein as owner or otherwise." See also *Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202.

We respectfully submit, however, that the rule laid down in these cases supports the contentions made in this brief, namely, that a Federal instrumentality is not subject to garnishment and attachment since the Congress has not given creditors the specific right to do so.

3. Federal Land Bank not a foreign corporation in any State of its district.

We believe that it is unnecessary to burden the court with a long argument respecting the error which has been assigned to the ruling of the Supreme Court of Arkansas, with respect to its holding that a Federal land bank is a "foreign corporation" in a State where it is authorized to do business. We shall, therefore, point as briefly as possible to the principles upon which this petitioner relies.

The Federal Land Bank of St. Louis exists and operates by virtue of an Act of the Congress of the United States, and is authorized by its charter to do business in several States, including the State of Arkansas. It is a *national corporation*, with no State citizenship (*Bankers' Trust Co.* v. *Texas and Pac. Ry.*, 241 U. S. 295).

A national corporation is not "foreign" to any State where it is permitted by law to do business. The Federal Farm Loan Act, under which this bank was created, is a law of Arkansas. This Court has held, in the case of *Claflin* v. *Houseman*, 93 U. S. 130, 136, that:

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty."

Counsel has been unable to discover any case where this Court has passed upon the applicability, to a national corporation, of State laws relative to foreign corporations. However, under the previous decisions of this Court, with respect to State legislation, a Federal land bank may not be included within the statutory definition of a foreign corporation which was relied upon by the court below:

"A 'foreign corporation' is one created by the laws of some other State or country." (C. & M. Dig. 9743).

"The words 'other country' signify any part of the world out of this State." (C. & M. Dig. 9744).

In *First National Bank* v. *California*, 262 U. S. 366, this Court held that a section of the California Code which provided that money deposited with any bank, the account of which had been inactive for more than twenty years after the date of its deposit, should escheat to the State, did not apply to funds on deposit in national banks. Mr. Justice McReynolds, in delivering the opinion, said:

"These banks are instrumentalities of the Federal Government. Their contacts and dealings are subject to the operations of general and undiscriminating state laws which do not conflict with the letter of the general object and purposes of congressional legislation. But any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purpose of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290.

"The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. • • • Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.'" *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 33, 34.

"Congressional legislation in respect of national banks 'has in view the erection of a system extending

throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States.' *Easton* v. *Iowa*, 188 U. S. 220, 229.

* * *

"This Court has often pointed out the necessity for protecting Federal agencies against interference by state legislation. The approved principle of *obsta principiis* should be adhered to. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank* v. *Dearing, supra; California* v. *Central Pacific R. R. Co.*, 127 U. S. 1; *Davis* v. *Elmira Savings Bank, supra; Easton* v. *Iowa, supra; Covington* v. *First National Bank*, 198 U. S. 100; *Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S. 516; *Choctaw, Oklahoma & Gulf R. R. Co.* v. *Harrison*, 235 U. S. 292; *Bank of California* v. *Richardson*, 248 U. S. 476."

Thus it appears that the laws of any State which tend to frustrate the purpose or impair the efficiency of an agency or instrumentality of the Federal Government is an interference with, and not binding upon, such instrumentality. Despite this principle, the Supreme Court of Arkansas said that "foreign corporations, in contemplation of law in this State, are defined" by sections 9743 and 9744 of its statutes. Because of this conclusion, another section of the same statutes was held to permit property of a Federal instrumentality to be seized by attachment, a burden which a State may not impose under the rules of this Court. By the same token, the "Arkansas Securities Act" * would also be applicable and would require the bank to obtain permission from State authorities before selling bonds in the

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* See pages 39 to 40 of the "Appendix."

Commonwealth. As this Court said in *Caledonian Coal Company* v. *Baker*, 196 U. S. 432, 446:

> "This state of the law may sometimes operate injuriously upon those who may wish to sue the railroad company in the territorial courts. But the situation cannot be changed by the courts. That can only be done by legislation."

However, other courts have held repeatedly that a corporation created by an Act of Congress with powers coextensive with the Union is not a foreign corporation within any State of the Union for the purpose of a State statute providing for constructive service upon foreign corporations. The case which has been most often cited is that of *Commonwealth* v. *Texas and Pac. Ry. Co.*, 98 Pa. St. 90. See also a more recent decision of the Supreme Court of North Carolina holding that the Federal Land Bank of Columbia was not a foreign corporation in that State. (*Leggett* v. *Federal Land Bank of Columbia*, 204 N. C. 151, 167 S. E. 557). In that case the court said:

> "The defendant in the instant case is a corporation created and organized under an act of the Congress of the United States, known as the Federal Farm Loan Act (see 12 U. S. C. A. § 641 *et seq.*). The validity of this act was upheld in *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577. The defendant was not only created and organized under and by virtue of said act of Congress; it derives its right to own property and to do business in this state solely from said act. It is not a foreign corporation having property or doing business in this state, under a license, express or implied, from North Carolina. 14 (*a*) C. J. 1214. For this reason the provisions of C. S. § 1137, are not applicable to the defendant. There was error in the order denying the motion of defendant that the action be dismissed."

See also *Steward* v. *Atlantic National Bank*, 27 F. (2d) 224, 228; *Matter of Cushing*, 40 Misc. 505, 82 N. Y. S. 795; *Eby* v. *Northern Pac. R. Co.*, 13 Phila. (Pa.) 161; *Texas, etc. R. Co.* v. *Weatherby*, 41 Tex. C. A. 409, 92 S. W. 58. 14 (a) C. J. 1214; 17 *Fletcher Cyc. Corp.* § 8291; Thompson on Corporations 3d Ed., Vol. 1, § 146.

Under the rule of these cases the Federal Land Bank of St. Louis is not a foreign corporation within the definition of the term as contained in the statutes of the State of Arkansas.

VIII. Conclusion.

In the light of the foregoing, it is respectfully submitted that the decision of the court below is incorrect and should be reversed.

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APPENDIX.

Crawford and Moses' Digest, (1921 *and* 1927) *Statutes of Arkansas:*

[Procedure in Attachments before Judgment.]

Section 1159. *Warning order.* Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action (a), that he had made diligent inquiry, and that it is his information and belief that the defendant is:

First. A foreign corporation, having no agent in this State; or,

Second. A nonresident of this State; or,

Third. Has departed from this State with intent to delay or defraud his creditors; or,

Fourth. Has been absent from this State four months; or,

Fifth. Has left the country of his residence to avoid the service of a summons; or,

Sixth. Conceals himself so that a summons cannot be served upon him, or, where either of the last two mentioned facts is stated in the return, by the proper officer of a summons against the defendant, the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order (b). Act March 30, 1915, p. 1081.

Section 1160. *Publication.* The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. Warning orders shall be published weekly for at least four weeks. Civil Code, section 80, as amended March 27, 1871, p. 219.

["Foreign Corporation" Defined.]

Section 9743. *Foreign corporation.* A "foreign corporation" is one created by the laws of some other State or country.

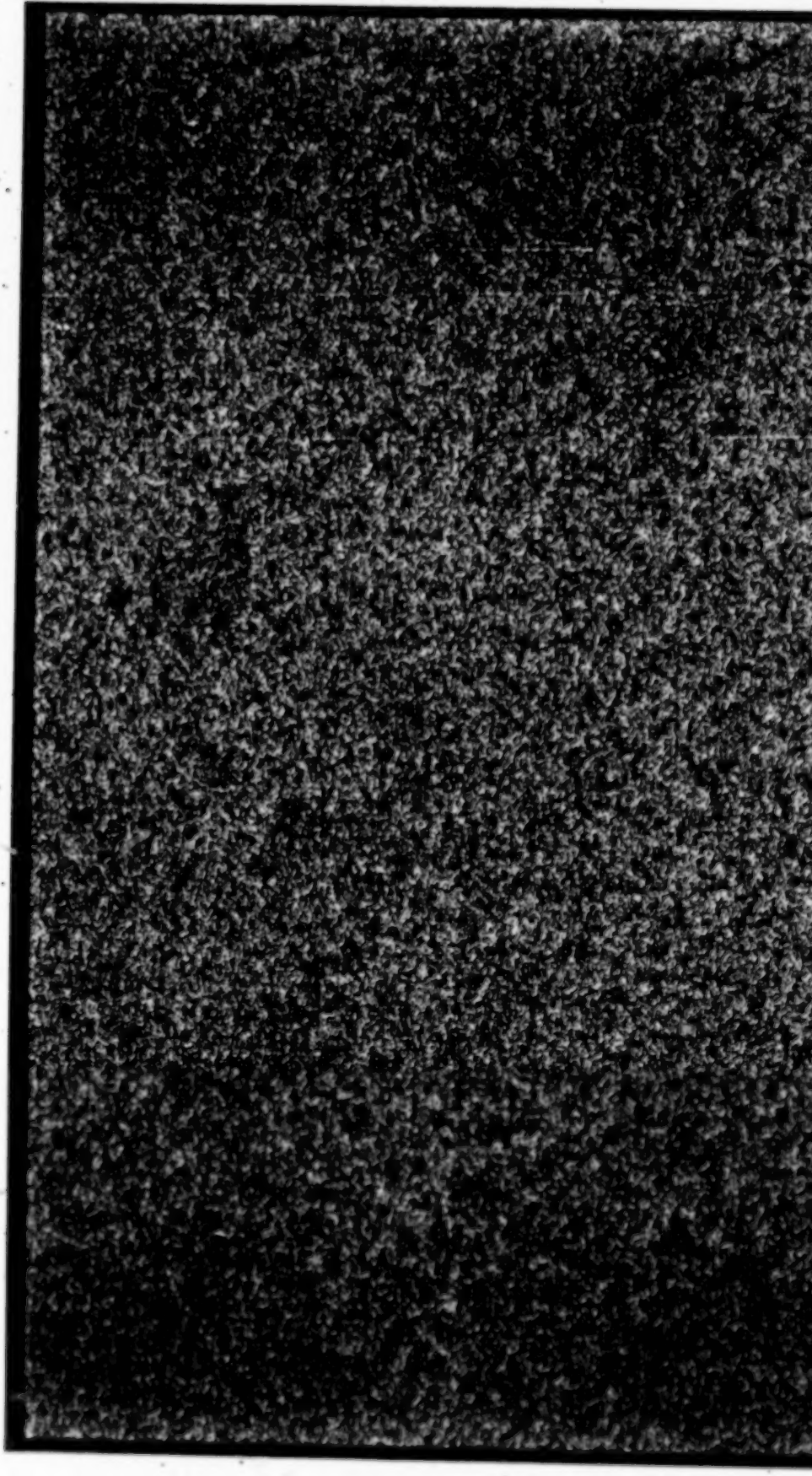
Section 9744. *Other country.* The words "other country" signify any part of the world out of this State.

[Issuance of Securities, etc.]

Section 8418h. *Does not apply to what securities.* The provisions of this Act shall not apply to (a) securities of the United States, or any foreign government; or any State or Territory thereof, or of any county, city, township, district, or other public taxing subdivision of any State or Territory of the United States, or any foreign government; (b) unsecured commercial paper; (c) securities of public or quasi public corporations, the issue of which securities is regulated by the Arkansas Railroad Commission or by any public service commission or board of equal authority of any State or Territory of the United States or securities senior thereto; (d) securities of State or National Banks or Trust Companies; (e) securities of any domestic corporation organized without capital stock, and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes; (f) mortgages upon real or personal property situated in this State where the entire mortgage is sold and transferred with the bonds, note or notes secured by such mortgage; (g) increase of stock sold and issued to stockholders, also stock dividends; (h) securities which are listed in any standard manual of information when a copy of the same has been presented and approved by said Commission; provided, however, that said Commission shall have power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities and also suspend either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if said Commission shall find in its opinion that the sale of such securities would work a fraud upon the purchaser thereof. Ib. sec. 5.

Section 8418r. *To comply with act before transacting business.* It shall be unlawful for any investment company

or dealer or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner in this State, any contracts, stocks, bonds, or other securities (except as expressly exempt herein) unless and until said Commission has approved thereof and issued its certificate in accordance with the provisions of this Act, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of the Act or the rules of the Commission. It shall be unlawful for any investment company, or dealer, or its or his agents to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus or other document in regard to its stocks, bonds or other securities in the State of Arkansas differing in any way from the copy filed with the said Commission as provided by this Act. It shall be unlawful for any newspaper published in the State of Arkansas to advertise the sale of any stocks, bonds or other securities which have not been approved by said Commission or which are not exempt under the provisions of this Act. Ib. sec. 15.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS, A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER.

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SUPPLEMENTAL BRIEF OF PETITIONER.

Development of the Farm Credit System.

For purposes of agricultural credit, the continental United States is divided into twelve districts. Each district is served by a group of four institutions, designed to meet the need for a national system capable of supplying all types of farm credit: a Federal land bank, a Federal intermediate credit bank, a production credit corporation and a bank for cooperatives, all under the supervision and regulation of the Farm Credit Administration. These four institutions are located in the same city, usually in the same building, and they are managed by a common board of directors.

Each of these institutions is a part of a coordinated system which has been developed over a period of years by congressional action. We shall review this development briefly.

Federal Land Banks.

The first permanent Government institutions for agricultural credit were the twelve Federal land banks, established under the Federal Farm Loan Act of July 17, 1916 (12 U. S. C., Chapter 7, subchapter I), for the purpose of making long-term loans to farmers upon the security of farm real estate. Closely related to these banks, and constituting an integral part of the system of farm mortgage credit, are the national farm loan associations, cooperative in character and organized under the Federal Farm Loan Act by local groups of farmers, for the purpose of obtaining credit from the Federal land banks.

On January 31, 1934, the flexibility of the credit facilities of Federal land banks was greatly increased by the provisions of the Federal Farm Mortgage Corporation Act (12 U. S. C., Chapter 7, subchapter II-A). This Act established a corporation with a capital of $200,000,000 furnished by the Government, and authorized the corporation to issue and have outstanding bonds not in excess of $2,000,000,000, such bonds to be fully guaranteed as to principal and interest by the United States. The corporation was authorized to acquire consolidated farm loan bonds (obligations of all twelve Federal land banks), either by purchase or by exchange for its own bonds. Thus, for the first time, the Federal land banks were enabled to obtain funds through this corporation, upon the credit of the United States.

The Second Annual Report of the Farm Credit Administration shows the extent to which the facilities of this

Corporation have been used in the Federal farm mortgage refinancing program. From May 1, 1933, through December 31, 1934, the Federal land banks made first mortgage loans in the approximate amount of $870,506,000. Of the funds required for the making of these loans, more than $575,000,000 were obtained by the Federal land banks, through the exchange of their consolidated bonds for bonds issued by the Federal Farm Mortgage Corporation, and fully guaranteed by the United States. During the same period the Land Bank Commissioner made loans (under § 1016) in the approximate amount of $623,948,000; and, of this amount, more than $400,000,000 was loaned by the Commissioner, acting on behalf of the Federal Farm Mortgage Corporation, and using bonds or the proceeds of bonds issued by the Corporation.

The Report also shows that since March 26, 1934, the Federal land banks have used bonds issued by the Federal Farm Mortgage Corporation, rather than cash, for the closing of most loans. This has been possible because approximately 90% of the loan proceeds has been used to refinance debts, and the creditors of farmers have accepted these bonds at par.

The extent of recent Government contributions to the Federal land banks, made for the purpose of enabling them to extend time for the payment of mortgage obligations, as provided in § 781, *Tenth-Thirteenth*, is clearly shown by this Report as follows: The Government subscribed $125,000,000 to the capital stock of the banks in 1932, of which $7,329,110 has since been retired; as of December 31, 1934, it had contributed $59,268,593 to the paid-in surplus of the banks, in order to permit the banks to extend time to their borrowers for the deferment and extension of amounts owing in reduction of the principal of their mortgage loans; and during the same period the Government paid to the

banks the sum of $12,356,925, to compensate them for the loss of income due to the statutory reduction in the interest rate of their mortgages.

Federal Intermediate Credit Banks.

After the farm mortgage system had been in operation for seven years, Congress passed the Agricultural Credits Act of March 4, 1923 (12 U. S. C., Chapter 7, subchapter III). This Act provided for the establishment of twelve Federal intermediate credit banks to furnish short-term and intermediate credit, by discounting the obligations of farmers which had originally been accepted by banks, by agricultural credit associations organized under State laws, and by other lending institutions, in connection with loans for agricultural purposes; also by lending money to cooperative credit institutions on the security of agricultural short-term paper. The Act required that these banks be located in the same cities as the Federal land banks, be managed by the same board of directors, and be operated under the supervision and regulation of the same Government office. By this Act, Congress placed in the Government a greater measure of control over the selection of directors of Federal land banks, who were made *ex officio* directors of the new intermediate credit banks. The original capital of these banks, totaling $60,000,000, was furnished by the United States, and all capital stock is Government-owned. The banks obtain their loan funds, for the most part, from the sale of debentures, which may be issued in amounts not exceeding ten times the capital and paid-in surplus of the issuing bank.

After another ten years Congress provided, by the Farm Credit Act of June 16, 1933 (12 U. S. C., Chapter 7, subchapter IV), for additional Government subscriptions of $40,000,000 to the capital and paid-in surplus of the Federal

intermediate credit banks; and also provided for a system of cooperative production credit associations, through which the facilities of the Federal intermediate credit banks would be more readily available.

In connection with this system of associations, Congress established twelve production credit corporations, whose principal functions are to organize, to assist in capitalizing, and to supervise the operation of the production credit associations. Congress placed these corporations in the same cities as the Federal land and intermediate credit banks, and under the management of the same directors (still greater control in the selection of directors being placed in the Government), and provided for Government subscription to the entire capital of these twelve corporations. According to the Second Annual Report of the Farm Credit Administration, the Government had furnished the production credit corporations with capital aggregating $112,000,000, as of December 31, 1934.

Banks for Cooperatives.

By the Farm Credit Act of 1933 (12 U. S. C., Chapter 7, subchapters V, VI), Congress provided for the establishment of banks for cooperatives, for the purpose of extending credit to farmers' cooperative marketing and purchasing associations, organized under State laws, and engaged in the processing or merchandising of agricultural commodities, and the purchasing of farm supplies. These banks afford permanent facilities for meeting the credit needs which were temporarily met by the Federal Farm Board,

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* The original provisions of law relative to the selection of the directors of Federal land banks are set forth in the Appendix to this Brief. The amended provisions are in 12 U. S. C., §§ 678-681.

through loans to cooperatives under the Agricultural Marketing Act of June 15, 1929 (Chapter 7, subchapter VII). The banks are required to be located in the same cities as the Federal land banks, to be managed by the same boards of directors, and to operate under the supervision and regulation of the same Government office.

The Farm Credit Act, in establishing these banks, provided that the initial capital should be furnished from Government funds (§ 1134b). Subscriptions to the capital stock of each district bank for cooperatives, paid in by the Government at the time of its organization, amounted to $5,000,000, and an additional $1,000,000 was subsequently subscribed to the capital stock of one of these banks, making a total Government subscription of $61,000,000. The Act requires that a cooperative association, in borrowing money from one of these banks, subscribe to its capital stock or guaranty fund in the ratio of $100 for each $2,000 or fraction thereof borrowed (§§ 1134d, 1134k). Government stockholdings in any of these banks may be increased or diminished, in the discretion of the Governor of the Farm Credit Administration, for the purpose of meeting the credit needs of the bank's district (§ 1134b).

The district banks for cooperatives, under the Farm Credit Act of 1933, may obtain loan funds from two sources: from their capital and earnings, and by rediscounting loan paper with the central bank for cooperatives. The central bank, also established by the Farm Credit Act of 1933, is managed by a board of directors consisting of the Cooperative Bank Commissioner (a Government official) and six other persons appointed by the Governor of the Farm Credit Administration (§ 1134g). This central bank, to whose capital stock the Government has subscribed $75,000,000 (Second Annual Report, Farm Credit Administration) is authorized to make loans under the same condi-

tions and for the same purposes as district banks for cooperatives, to rediscount loan paper for the district banks, and to issue debentures against collateral security, in amounts not in excess of five times the paid-in capital and surplus of the bank (§§ 1134j, 1134m).

The System as a Whole.

We thus find that Congress, by successive acts, established: *first*, the Federal land banks and national farm loan associations for the purpose of extending long-term credit on farm mortgage security; *second*, the Federal intermediate credit banks, production credit corporations and production credit associations for the purpose of extending short and intermediate term credit, for purposes of agricultural production, such as the planting of crops and the breeding, raising and fattening of livestock; *third*, the banks for cooperatives, to extend credit to cooperative purchasing or marketing associations, to assist such associations in the effective merchandising of agricultural commodities and food products thereof, to assist such associations in the financing of their operations, or in the construction or acquisition (or refinancing the cost of construction or acquisition) of physical marketing facilities for preparing, handling, storing, processing or merchandising agricultural commodities and food products thereof; and *fourth*, the Federal Farm Mortgage Corporation, for the purpose of permitting the Federal land banks to use the faith and credit of the United States in financing their operations and to provide the Land Bank Commissioner with funds for the making of first and second mortgage loans.

In entering upon each additional field of agricultural credit, Congress has made use of machinery already established, by placing new institutions under the same management as old, and by vesting the supervisory and reg-

ulatory power in the same governmental office. With each expansion of the original credit facilities, Congress has placed in the supervisory authority greater control over the actual operation of the institutions, by increasing the proportion of Government-appointed directors on the boards which manage them.

It is apparent, therefore, that both in law and in practical operation, the banking institutions are but parts of a single system, established by congressional action for governmental purposes, and operating toward a common end.*

Provisions of Law Common to Farm Credit Institutions.

There are certain provisions common to the statutes creating the banking institutions comprising the Farm Credit System. For the convenience of the Court, these provisions will be set forth in outline form.

Federal land banks, "when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs * * *; and

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* It may be helpful in visualizing this system to note the volume of its current operations.

The Second Annual Report of the Farm Credit Administration shows that as of December 31, 1934, the outstanding loans and discounts of the banks operating under its supervision, exclusive of the Central Bank for Cooperatives and the joint stock land banks, were as follows (figures stated in even thousands of dollars):

$1,896,415,000—Federal land bank loans
189,317,000—Federal intermediate credit bank discounts and loans (composed as follows:
$61,024,000—to production credit associations
55,672,000—to private financing institutions

they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them". (§ 701.)

Federal land banks have power "to sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons". (§ 676.)

National farm loan associations "shall organize subject to the requirements and the conditions specified • • • in sections 671-683 of this chapter [§ 4, Federal Farm Loan Act], so far as the same may be applicable". (§ 716). *National farm loan associations,* "including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and

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33,969,000—to cooperative associations
461,000—to bank and trust companies
55,212,000—to livestock loan companies, agricultural credit corporations, etc.
38,651,000—to regional agricultural credit corporations)
12,961,000—District banks for cooperatives, loans

$2,098,693,000—Total outstanding loans and discounts, December 31, 1934.

This Report further shows the following volume of loans and discounts made by these banks during the year 1934 (figures stated in even thousands of dollars):

$ 731,367,000—Federal land bank loans
405,886,000—Federal intermediate credit bank discounts and loans
18,717,000—District banks for cooperatives, loans

$1,154,970,000—Total loans and advances, 1934.

local taxation, except taxes upon real estate held, purchased, or taken by said * * * associations * * *" (§ 931). These associations "are authorized, upon request of the Land Bank Commissioner, to make available to him their services and facilities to aid in administering the provisions" of the Emergency Farm Mortgage Act, relative to loans by the Commissioner on farm mortgage security (§ 1018).

Federal intermediate credit banks, "when designated for that purpose by the Secretary of the Treasury, shall act as fiscal agents of the United States Government and perform such duties as shall be prescribed by the Secretary of the Treasury" (§ 1024).

Federal intermediate credit banks "have power to sue and be sued both in law and equity" (§ 1023). This section, unlike the corresponding provision with respect to Federal land banks, provides that "for purposes of jurisdiction [a Federal intermediate credit bank] shall be deemed a citizen of the State where it is located".

Banks for cooperatives (also *production credit corporations and production credit associations*), "when designated for that purpose by the Secretary of the Treasury, shall act as fiscal agents of the United States Government and when acting as such shall perform such duties as shall be prescribed by the Secretary of the Treasury" (§ 1138b).

Banks for cooperatives "have power to sue and be sued in any court" (§ 1138).

It is therefore apparent that all of these institutions, as well as all production credit corporations and production credit associations, are specifically authorized to serve as financial agents of the United States, and are specifically authorized to "sue and be sued". There is no material

distinction between the powers and liabilities of a Federal land bank in this respect and the corresponding powers and liabilities of the institutions for intermediate and short-term credit. While national farm loan associations, which constitute a part of the Federal land bank system, are not expressly authorized to sue and be sued, it appears that such power and liability is granted to them by the above quoted reference to certain powers and liabilities vested in Federal land banks; and it also appears that the associations may be and are employed, upon request of the Land Bank Commissioner, as financial agencies of the Government, to disburse the proceeds of loans made by the Commissioner.

In the recent case of *Hartford Production Credit Association* v. *Clark*, 118 Conn. 341, 172 Atl. 266, the following statement was made relative to the character of these short-term credit institutions as Federal agencies:

> "The facilities for short-term credits to agricultural producers afforded by the original action of the Federal government and through subsequent passage of the Farm Credit Act of 1933 were in response to imperative needs for relief of this nature so extensive and acute as to be of general cognizance * * *. The résumé of the elaborate provisions of the Farm Credit Act of 1933 which reasonable limitations of space permit us to give and the admitted facts are sufficient to demonstrate that the plaintiff [production credit] association is, in essence and in all practical aspects, a federal agency within the contemplation of our [chattel mortgage] statute. It is, and could be, created only under the federal act, and is expressly declared therein to be an instrumentality of the United States; its operations are supervised and regulated in all material respects by other federal agencies and by federal officials, and the funds with which it may make loans are derived from federal sources and obtained through other instrumentalities of the United States."

For the same reasons it has been held that a land bank, chartered under the provisions of the Federal Farm Loan Act, is neither a foreign corporation nor a domestic corporation, within the ordinary meaning of those terms, as set forth in State statutes. *Fisher & Van Gilder* v. *First Trust Joint Stock Land Bank,* 210 Iowa 531; 231 N. W. 671; 69 A. L. R. 1340, Ann. 1346.

It is well settled also, that the rights of creditors of public corporations and quasi-public corporations must yield to the paramount interests of the whole public. These corporations are granted franchises and are charged with duties which the public has an interest in having properly performed. The property of such corporations is exempt from seizure by attachment, garnishment, or execution. The remedy of creditors is not by summary seizure of property, but by the appointment of a receiver. (*Gue* v. *Tide-Water Canal Co.,* 24 How. (U. S.) 257. See also 10 Fletcher Cyc. Corp., § 4776; *Gardner* v. *Mobile & N. W. R. Co.,* 102 Ala. 635, 48 Am. St. Rep. 84; *Northern Alabama Railway Co.* v. *Lowery,* 3 La. App. 511, 57 So. 262.)

Therefore, each unit of the permanent Federal system of long and short-term agricultural credit is, equally with the Federal Land Bank of St. Louis, immediately concerned with the interpretation which this Court will place upon the Federal Farm Loan Act, in determining whether liability "to be sued" is synonymous with liability to seizure of property through garnishments or attachments.

Practical Considerations.

It will be recalled that the propositions so strongly urged upon this Court, in the petitioner's brief on the merits, are: That where the application of a State law to a Federal instrumentality would impede such instrumentality in the conduct of its operations, such statute may not be deemed

to extend to the Federal instrumentality, and that the application of garnishment or attachment laws to a Federal land bank would inevitably operate to hinder and impede such bank in its operations.

Similarly, the Federal intermediate credit banks and banks for cooperatives would be hindered in the conduct of their business if their property were subject to attachment or garnishment. May we cite just one example.

Both Federal intermediate credit banks and banks for cooperatives are authorized to make what are commonly termed "commodity loans" to cooperative associations. In each district, these cooperative associations engage in processing and marketing perishable commodities. In the Seventh Federal Land Bank District it is not uncommon for the intermediate credit bank or the bank for cooperatives to make a loan for as much as $750,000 to a cooperative association composed of cherry growers, in order that the association may meet the cost of picking and canning the fruit of its members' orchards. Funds must be available to the association when the picking season commences, in order to meet payrolls and to cover the cost of crates, trucking, etc. However, since the association cannot afford to pay interest for any unnecessary period, advances are made from the loan proceeds as and when needed.

The picking and canning of a cherry crop consumes only about ten days. Within that period, the crop must be gathered, taken to the canning plant and processed. Its perishable nature permits no delay. An entire crop of cherries, produced by hundreds of farmers in a single locality, might be ruined if, on the eve of the canning season, the funds of the bank should be impounded or made unavailable through the levy of an attachment or garnishment. Even a brief delay might result in heavy loss to the cooperative association and its members.

Similar examples are afforded by the operations of any intermediate credit bank or bank for cooperatives, and the variations upon the type of example are innumerable.

The effect of a garnishment or attachment might readily extend not only to individual farmers and their local organizations, but also to the credit of the Government's instrumentality. Both Federal land banks and Federal intermediate credit banks must be in position to meet interest payments on their bonds and debentures as the same come due. Upon the failure of one bank to meet its obligations, all banks of the same character become obligated under the law to step into the breach. (12 U. S. C., §§ 872, 1081.)

It is obviously unimportant to the petitioner in this case that a small tract of land in the hills of Arkansas should have been attached in a suit for small amount of money. However, it is of the utmost importance to the petitioner, to all other Federal land banks, and to the banks furnishing short and intermediate-term credit, that their assets be not impounded summarily, but be left for administration in accordance with the requirements and conditions of the laws under which these banks operate.

Respectfully submitted,

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APPENDIX.

Original provisions of the Federal Farm Loan Act, relative to selection of directors of Federal land banks:

[NOTE.—The original provisions of the Federal Farm Loan Act relative to the selection of directors, which are not contained in the United States Code, are set forth below. These provisions, as amended by Acts of 1923 and 1933, respectively, are contained in Title 12 of the United States Code, §§ 678-681.]

Federal Farm Loan Act, § 4, Seventh (39 Stat. 363).

The board of directors of every Federal land bank shall be selected as hereinafter specified and shall consist of nine members, each holding office for three years. Six of said directors shall be known as local directors, and shall be chosen by and be representative of national farm loan associations; and the remaining three directors shall be known as district directors, and shall be appointed by the Federal Farm Loan Board and represent the public interest.

At least two months before each election the Farm Loan Commissioner shall notify each national farm loan association in writing that such election is to be held, giving the number of directors to be elected for its district, and requesting each association to nominate one candidate for each director to be elected. Within ten days of the receipt of such notice each association shall forward its nominations to said Farm Loan Commissioner. Said commissioner shall prepare a list of candidates for local directors consisting of the twenty persons securing the highest number of votes from national farm loan associations making such nominations.

At least one month before said election said Farm Loan Commissioner shall mail to each national farm loan association the list of candidates. The directors of each national farm loan association shall cast the vote of said association for as many candidates on said list as there are

vacancies to be filled, and shall forward said vote to the Farm Loan Commissioner within ten days after said list of candidates is received by them. The candidates receiving the highest number of votes shall be elected as local directors. In case of a tie the Farm Loan Commissioner shall determine the choice.

The Federal Farm Loan Board shall designate one of the district directors to serve for three years and to act as chairman of the board of directors. It shall designate one of said directors to serve for a term of two years and one to serve for a term of one year. After the first appointments each district director shall be appointed for a term of three years.

At the first regular meeting of the board of directors of each Federal land bank it shall be the duty of the local directors to designate two of the local directors whose term of office shall expire in one year from the date of such meeting, two whose term of office shall expire in two years from said date, and two whose term of office shall expire in three years from said date. Thereafter every local director of a Federal land bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the board of directors shall be filled for the unexpired term in the manner provided for the original selection of such directors.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 594

THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

Petitioner,

vs.

A. B. PRIDDY, CIRCUIT JUDGE,

Respondent.

PETITION FOR REHEARING.

Comes now the Federal Land Bank of St. Louis and presents this its petition for a rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

This Court decided, in its opinion rendered on April 29, 1935, that the Supreme Court of Arkansas was not in error in holding that your petitioner was subject to attachment and garnishment. In view of the statements made in the opinion we most respectfully ask that this case be reheard for the following reasons:

Grounds for Rehearing.

I.

This Court held that since the Federal Farm Loan Act does not show plainly the extent to which Federal land banks are amenable to the summary process of attachment,

"it is necessary to ascertain, by examination of the purposes and organization of the federal farm loan system, whether immunity from attachment is granted by implication. See *Shaw* v. *Oil Corp.*, 276 U. S. 575."

The *Shaw* case announced the following rule (p. 579): where Federal instrumentalities (Indian lands) "were so intimately connected with the performance of governmental functions as clearly to require independence of all state control • • • *nothing short of an express declaration by Congress would have subjected them to state"* interference (by taxation). *"Governmental agencies similarly held to be exempt are national banks."* (Italics added.)

In the *Priddy* case, the Court reaffirmed its previous rulings that Federal land banks *"are instrumentalities of the federal government, engaged in the performance of an important governmental function."* We therefore respectfully submit that the rule in the *Shaw* case, when applied to government instrumentalities of this character, renders them immune from state interference as a matter of right, and that such immunity continues, *unless taken away by the express words of a Federal statute.*

In the *Shaw* case this principle was held to apply even to *national banks*, which are (1) privately owned, (2) in which the Government owns no stock, (3) in which there are no directors appointed by the Government to *"represent the public interest,"* and (4) *none of whose loans are required to be approved by a public officer.* These restrictions upon Federal land banks are not badges or indicia of private corporations.

In other decisions this Court has held repeatedly that a statute will not be given a construction *"which would in any degree disarm the Government of a power which has been confided to it to be used for the general good • • • unless plain and express words indicated that such was the inten-*

tion of the Legislature." *Brown* v. *Duchesne*, 19 How. 183; *Pine Hill Co.* v. *U. S.*, 259 U. S. 191; *N. Y.* v. *Irving Trust Co.*, 288 U. S. 329; *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152; *U. S. v. Stevenson*, 215 U. S. 190; *U. S.* v. *Herron*, 87 U. S. 251; *Dollar Savings Bank* v. *U. S.* 86 U. S. 227; and *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554. In case of doubt, a construction must be adopted most advantageous to the interest of the Government. *Cornell* v. *Coyne*, 192 U. S. 418; *Hannibal, etc. R. Co.* v. *Packet Co.*, 125 U. S. 260; and *Reichelderfer* v. *Quinn*, 287 U. S. 315.

Jurisdiction of suits against the United States does not exist in the absence of specific authority, and liability to suit will not be found by implication. *Nassau Smelting Works* v. *U. S.*, 266 U. S. 101; *Davis* v. *O'Hara*, 266 U. S. 314; *Schillinger* v. *U. S.*, 155 U. S. 163; *Price* v. *U. S. and Osage Indians*, 174 U. S. 373 and *Belknap* v. *Schild*, 161 U. S. 10 (Injunction suit).

II.

This Court held that "*federal land banks, although concededly federal instrumentalities, possess also some of the characteristics of private business corporations.*"

We respectfully submit that the attributes of private corporations, mentioned in the opinion, do not make these banks private institutions. As this Court stated, in *Osborn* v. *U. S. Bank*, 9 Wheat. 738:

> The bank "is not an instrument which the government found ready made • • • *but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business.* • • • The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation • • •. While they

seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business" (p. 860). *"To destroy or preserve the one, is to destroy or preserve the other"* (p. 862). "If the trade of the bank be essential to its character, as a machine for the fiscal operations of the government, that trade must be as exempt from state control as the actual conveyance of the public money. * * No distinction is taken between them" (p. 867).

Their functions are limited by the Act to (1) The making of first mortgage loans on farm lands at low rates of interest; (2) The selling of such mortgages to the public through the medium of tax exempt bonds; (3) The furnishing of a market for Government bonds; and (4) Acting as depositaries of public moneys and as financial agents of the Government. § 14 of the Act provides that *no Federal land bank shall have power "to transact any banking or other business not expressly authorized."*

The temporary authorization for the acquisition of non-voting stock by private investors was inserted with the hope that the Treasury would not have to pay the original stock subscription amounting to $9,000,000. The few privately owned shares have long since been retired. (p. 2, Sen. Rpt. No. 144, 64th Cong. 1st Sess.; Remarks of Senator Hollis, Cong. Rec. 53, 64th Cong. 1st Sess. p. 6856).

Farm loan associations and farmers who borrowed directly from the banks were required to subscribe to stock so as to give them a "personal stake" in the system,[1] to provide a cushion against losses, to make it possible for dividends,[2] if any, to further reduce interest rates, and to

[1] P. 10, Sen. Rpt. No. 144, 64th Cong. 1st Sess.

[2] "Expenses and Profits," p. 5, same report. "The land banks are permitted to charge borrowers 1 per cent more for interest than they pay bondholders. * * * This margin of 1 per cent on the amount of unpaid principal outstand-

relieve the Government of the burden of financing the whole operation from the Treasury of the United States.

Under the limited authority to acquire the necessary real estate for the conduct of their business, and the right to hold, *for only five years,* lands acquired through defaulted loans, the banks may not speculate in real estate (§ 13). The power to appoint agents and pay them (§ 15); to make contracts (§ 4); to charge interest (§§ 12, 13); to charge fees covering only the *actual cost of* services rendered (§ 13); to borrow money and pay interest thereon (§ 13) *are all powers possessed by the Government itself,* and no bank could have carried out the purposes of its creation without them.

We feel, however, that the other provisions of sections 12 and 13 indicate the public character of these institutions:

> An appropriation of $50,000,000 was authorized to permit the banks to extend the time of payment of mortgages held by them, and this contribution must be repaid to the Government whenever, *in the opinion of the Land Bank Commissioner,* the banks have resources available therefor. (§ 13—Tenth).
>
> The *mandate* in paragraph "Twelfth" (§ 13) reduced the interest rate on extended payments. *Principal payments* were automatically postponed for a period of five years by the "Eleventh" paragraph of the same section.
>
> Under the "Twelfth" paragraph of §12 the interest rate on all mortgages previously received from associations was automatically reduced to 4½ per cent, and interest on mortgages placed through agents was reduced to 5 per cent. An appropriation of $15,000,000 was made to compensate the banks for this loss of revenue.

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ing is available to the bank for its expenses and earnings." Through the payment of dividends "the earnings of the system go to the borrowers, and its cooperative character is assured."

Under the Federal Farm Mortgage Corporation Act the banks are permitted to use the Government's credit to the extent of $2,000,000,000 (§ 13—Fifteenth).

We respectfully submit that these legislative pronouncements and the contributions from the Treasury, point to but one conclusion—that the banks are in name and in fact purely Federal agencies.

III.

The Court points out that except for the general authority to sue, given creditors in section 4, the only other remedy available to them is the appointment of a receiver under the provisions of section 29, and that such remedy "*is available only through the favorable action of the Farm Credit Administration.*"

A judgment against a Federal land bank settles a disputed claim and becomes an absolute obligation. If the bank is solvent, the judgment will be paid unless it is assumed that public officials will fail to do their duty. Failure of the four government directors to vote for prompt payment of a judgment would be ground for removal from office (§§ 4, 17). Government examiners will report any unpaid judgments, and it must be assumed that appropriate action will be taken by the Farm Credit Administration (The *Earle cases*, 178 U. S. 449, 456).

If the bank is *insolvent* when the judgment is rendered, it would be the duty of the Land Bank Commissioner to place it in the hands of a receiver. We agree with the Court that this is a matter of grace, but if the Commissioner fails to act in a proper case a court of equity would have authority to grant relief. *Brusselback* v. *Chicago Joint Stock Land Bank*, 69 F. (2d) 598; certiorari denied, 292 U. S. 641.

Furthermore, this Court has said that if a *public corporation is insolvent*, a judgment creditor should not be per-

mitted to levy an execution on its property and thereby obtain a preference over other creditors, or interfere with the performance of important governmental functions, and that receivership is his proper remedy if the judgment is not paid. *Gue* v. *Tide Water Canal Co.*, 24 How. 257; *Buncombe County Commissioners* v. *Tommey*, 115 U. S. 122, 134; *Hammock* v. *Loan and Trust Company*, 105 U. S. 77, 90; and *East Alabama Railway Company* v. *Doe*, 114 U. S. 340, 353.

We respectfully submit that these remedies are sufficient to protect the interests of creditors, without giving them further the summary remedy of attachment, garnishment, and execution.

IV.

The Court referred to a number of cases involving the Fleet Corporation, in support of the conclusion that "*Immunity of corporate government agencies from suit and judicial process, and their incidents, is less readily implied than immunity from taxation.*"

The Fleet Corporation was incorporated as a private business concern under the laws of the District of Columbia.* In the early days of its existence the United States could have sold its entire stock interests therein and the Corporation would have lost every vestige of its sovereignty. Because of its private character, it was necessary to review each act of the Corporation to determine whether it was acting as a Government instrumentality or as a free agent.

On the other hand, petitioner was incorporated by the United States and the Federal Farm Loan Act is its charter. Federal officers control its every act done in performance

* *Sloan Shipyards v. U. S., etc. Fleet Corp.*, 258 U. S. 549.

of its governmental functions.* All stock and paid-in surplus subscribed by the government may be retired, but such circumstance would not change the fundamental character of the bank. Stock ownership alone is not the determining factor. This Court stated in *U. S. Bank* v. *Planters' Bank*, 9 *Wheat.* 904, 907: "as a member of a corporation, a government never exercises its sovereignty" except to the extent of powers *"expressly given by the incorporating act"*; but the rule is different, as announced one day previously (*Osborn* v. *U. S. Bank*), with respect to the sovereign immunities of *a corporation established as an agency of the government creating it.*

We submit that these facts bring the banks under the principles announced in *The Davis*, 10 Wall. 15, namely, that no proceeding *in rem* may be instituted to recover property when in the possession of officers or agents of the government charged therewith.

V.

The Court based its decision in part on the fact that the remedies afforded to creditors of Federal land banks are identical with those given to creditors of *joint stock land banks, and stated that the latter have no attributes "to suggest that they are government instrumentalities."*

We respectfully remind the Court of its previous ruling that joint stock land banks are agencies designed to *"serve the governmental purposes declared by Congress in their creation."* (*Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180, a case involving the validity of bonds issued by a joint stock land bank).

Except for their stock being owned privately, and their directors being elected by the stockholders, the operations of joint stock land banks are subject to the same strict

* See synopsis of the various provisions of the Act set forth on pp. 12 to 15 of Petitioner's Brief.

regulation as Federal land banks, and their operations are more closely supervised and controlled than those of national banks, which were referred to in the *Shaw* case, *supra*, as instrumentalities of the Government, "so intimately connected with the performance of governmental functions as clearly to require independence of all state control" (p. 579). Also *Osborn* v. *U. S. Bank, supra.*

Furthermore, Congress has provided $75,000,000 to assist in *orderly liquidation* of the joint stock land banks, and $25,000,000 to permit them to extend the time of payment of obligations due from their respective borrowers. (§§ 29, 30, 31, Emergency Farm Mortgage Act of 1933; 12 U. S. C. 810, 823—Historical Note). By virtue of the provisions of this Act, the banks may not in the future "issue any tax-exempt bonds or make any farm loans except such as are necessary and incidental to the refinancing of existing loans or bond issues, or to the sale of any [acquired] real estate". (§ 29.)

Joint stock land banks have ceased to exist as going concerns. Under the present law, there is only one system of land banks left to carry out the purposes of the Farm Loan Act: the Federal land banks.

VI.

The Court held that *"liability to suit 'as fully as natural persons' extends by implication to attachment and execution".*

We submit most respectfully that this phrase in section 4 does not purport to prescribe the process by which the bank or its adversary may be hailed into court, or to define the privileges and immunities of either party. Under its provisions, it could not be said that the banks have authority to obtain a judgment against a lunatic (a natural person) by bringing him into court without a guardian.

With respect to the "*'District of Columbia' a body corporate for municipal purposes, with power to contract and be contracted with, to sue and be sued*", this Court said in *District of Columbia* v. *Woodbury* 136 U. S. 450, that the District was subject to suit for damages even though "*none of its officers can pay a judgment against it*" and "*no process against it could enforce payment*". Thus the Court indicated that it did not regard the liability of a public corporation to be sued as synonymous with its liability to summary process of execution. In the same opinion the Court pointed out also (p. 456):

> "Because it was a municipal corporation proper, *as distinguished from a corporation established as an agency of the government creating it*, this court held in the Barnes Case that it was responsible for such negligence * * *." (Italics added.)

This Court has held in substance in other opinions that a Federal land bank is "*a corporation established as an agency of the government creating it.*"

The Court lays some stress upon the fact that national banks are given express immunity from attachment and garnishment.

We respectfully submit that the Congress could have assumed, in view of the "express words" doctrine previously announced by this Court, that it was unnecessary to give the land banks specific immunity from summary process. Added weight is given to this conclusion when we compare the provisions of section 29 of the Farm Loan Act: Upon failure to meet "its outstanding obligations of any description" the bank may be placed in receivership—with the corresponding provision (12 U. S. C. 191) of the National Banking Act: whenever a *judgment* has "remained unpaid for the space of thirty days," a receiver may be appointed.

VII.

In conclusion the Court stated: *"It does not appear that the attachment would directly interfere with any function performed by petitioner as a federal instrumentality."*

We respectfully submit that Petitioner's "free assets" are mere working tools, necessary for the performance of its statutory duties as a federal agency and instrumentality and that this working capital may not be impounded. (*Osborn* v. *United States Bank*, 9 Wheat. 738.)

Conclusion.

For these reasons it is respectfully and earnestly urged that this petition for rehearing be granted, and that the judgment of the Supreme Court of Arkansas be, upon further consideration, reversed.

Respectfully submitted,

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Certificate of Counsel.

I, Peyton R. Evans, one of the counsel for petitioner, do hereby certify that the foregoing petition for a rehearing in this case is presented in good faith and not for delay.

PEYTON R. EVANS,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES.

No. 594.—October Term, 1934.

The Federal Land Bank of St. Louis, a Corporation, Petitioner *vs.* A. B. Priddy, Circuit Judge.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.

[April 29, 1935.]

Mr. Justice Stone delivered the opinion of the Court.

A real estate broker brought suit in the Circuit Court for Pope County, Arkansas, against petitioner, incorporated under Act of Congress (Federal Farm Loan Act, July 17, 1916, c. 245, 39 Stat. 360), and domiciled in Missouri, to recover a brokerage commission. Pursuant to local law (Crawford & Moses' Digest, §§ 1159-1163), he began the suit by attachment of real estate of the petitioner in the county, as that of a foreign corporation.

Petitioner appeared specially in the circuit court and moved to vacate the attachment, on the grounds that it is not a foreign corporation subject to attachment under the pertinent statutes of Arkansas, and that it is a federal instrumentality, immune from mesne process of attachment, by virtue of its organization and functions under the statutes of the United States. On denial of the motion, petitioner sought of the Supreme Court of the State a writ of prohibition directed to respondent, the Circuit Judge, which was denied. — Ark. —. We brought the case here on certiorari. — U. S. —.

The ruling of the state Supreme Court, that petitioner is a foreign corporation within the meaning of the Arkansas attachment statute, and that the attachment was authorized by local law, presents only a state question, which is not open for review here. The sole question for our consideration is whether the petitioner is exempt from attachment because it is a federal agency or instrumentality which Congress has not expressly subjected to judicial process.

Without now entering into a detailed examination of the subject, it is sufficient that this Court has already had occasion to con-

sider the organization and functions of federal land banks, and to declare that they are instrumentalities of the federal government, engaged in the performance of an important governmental function. *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180; *Federal Land Bank* v. *Gaines*, 290 U. S. 247. As such, so far as they partake of the sovereign character of the United States, Congress has full power to determine the extent to which they may be subjected to suit and judicial process. See *Eastern Transportation Co.* v. *United States*, 272 U. S. 675, 677. Whether federal agencies are subjected to suit and, if so, the extent to which they are amenable to judicial process, is thus a question of the congressional intent. See *The Lake Monroe*, 250 U. S. 246, 249; *Sloan Shipyards* v. *United States*, 258 U. S. 549; *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 559. If the answer is not made plain by the words of the statute, it is necessary to ascertain, by examination of the purposes and organization of the federal farm loan system, whether immunity from attachment is granted by implication. See *Shaw* v. *Oil Corp.*, 276 U. S. 575.

Section 4 of the Federal Farm Loan Act provides that federal land banks "shall have power . . . to sue and be sued, complain, interplead, and defend, in any court of law and equity, as fully as natural persons." This express waiver of immunity from suit narrows the inquiry to the question whether liability to suit includes by implication judicial process of attachment and execution, which are usual incidents of suits against natural persons. For it is conceded that if the liability to suit includes liability to execution, it would equally include liability to process of attachment, by which the property seized is held subject to execution.

In interpreting § 4, it is to be borne in mind that federal land banks, although concededly federal instrumentalities, possess also some of the characteristics of private business corporations.[1] See *Federal Land Bank* v. *Gaines*, *supra*, 254. The statute does not contemplate that their stock is to be wholly, or even chiefly, govern-

[1]The legislative history of the Federal Farm Loan Act shows that Congress understood that many of the activities of the federal land banks were to be of a private character. See Report, Joint Cong. Comm., H. R. Doc. No. 494, 64th Cong., 1st Sess., p. 6; Report of Senate Comm. on Banking and Currency, No. 144, 64th Cong., 1st Sess., p. 2; Remarks of Senator Hollis, sponsor of the bill, 53 Cong. Rec. 6854. For this reason the Senate gave extended consideration to the constitutionality of exempting federal land banks from state taxation. 53 Cong. Rec. 6961-6970, 7305-7318, 7372-7378.

ment owned.[2] Its acquisition by private investors is permitted, § 5, and its subscription by the borrowing national farm loan associations is compulsory, § 7. The operations of the federal land banks are, in part at least, for profit. § 5. In the conduct of their business they may enter into contracts, § 4, borrow money, receive interest and fees, § 13, pay the expenses and commissions of agents, § 15, and pay dividends on their stock, § 5. While they are required to deposit in trust farm mortgages as security for farm loan bonds, § 13, they may acquire and dispose of property in their own right, including land. § 13. They thus have many of the characteristics of private business corporations, distinguishing them from the government itself and its municipal subdivisions, and from corporations wholly government owned and created to effect an exclusively governmental purpose. This is a circumstance which gives some support to the inference that the intended scope of the liability to suit includes judicial process incident to suit. See *District of Columbia* v. *Woodbury*, 136 U. S. 450, 456; *Clallam County* v. *United States*, 263 U. S. 341, 345.

The implication finds support also in the fact that the remedies afforded by the Federal Farm Loan Act to creditors of federal land banks are identical with those given to creditors of joint stock land banks. Joint stock land banks are privately owned corporations, organized for profit to their stockholders through the business of making loans on farm mortgages. § 16. There is nothing in their organization and powers to suggest that they are government instrumentalities. Section 16 declares that "except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions

[2] The original capitalization of the twelve federal land banks was $9,000,000, of which the Treasury subscribed $8,892,130. (Federal Farm Loan Board, Annual Report, 1917, p. 13.) As the national farm loan associations, made up of individual borrowers, were organized and borrowed from the banks, they were required to purchase stock in the banks. § 7. By this method the original Treasury subscription was almost wholly retired, and only $204,698 of the issued capital stock, $65,676,130, was Government owned in 1931. (Federal Farm Loan Board, Annual Report, 1931, p. 21.) Recent legislation has resulted in a large increase in the capital stock and surplus of the federal land banks, contributed by the Government. See Act of January 23, 1932, c. 9, 47 Stat. 12, 12 U. S. C. 698; Act of June 16, 1933, c. 100, 48 Stat. 274, 279; cf. Act of January 31, 1934, c. 7, 48 Stat. 344, 12 U. S. C. A. 1020 *et seq.* But the liability to judicial process cannot be thought to fluctuate with the varying amount of the government investment. See Sloan Shipyards v. United States, 258 U. S. 549, 566.

are applicable . . . ." There is no other provision relating to their general corporate powers and liabilities. Section 29 provides that "upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Farm Credit Administration [Federal Farm Loan Board] . . . ." Except for § 4, subjecting federal land banks to suit, made applicable to joint stock land banks by § 16, there is no other remedy provided for creditors of either class of banks whose judgments are unpaid, and the receivership is available only through the favorable action of the Farm Credit Administration. In view of the character of the business of joint stock land banks, there is no ground for supposing that Congress intended to render their property immune from seizure by judicial process and thus to make a receivership, if permitted by the Farm Credit Administration, the sole means of compelling payment of judgments against them, or that it would have extended to them the provisions and restrictions of § 16 if it had been thought to exempt them from attachment and execution. The inference is strong that by treating the two types of corporations alike with respect to liability to suit and attachment, the one, as much as the other, was intended to be subject to judicial seizure of its property, such as is ordinarily incident to suits, to which both are expressly made subject.

It is of some significance, also, that Congress thought it necessary, by the terms of § 26, to exempt federal land banks from taxation, a provision which is not made applicable to joint stock land banks. There is thus a specific grant of immunity from taxation, to a corporation having its own purposes as well as those of the United States, and interested in profits on its own account, see *Clallam County* v. *United States, supra,* 344, 345; compare *The Lake Monroe, supra,* 256, in contrast to the legislative silence as to attachment and execution in suits to which the bank is liable. This affords additional evidence of the congressional judgment that the attachment and execution, as distinguished from liability to taxation, are not obstacles to the performance of the governmental functions committed to federal land banks. Had it been intended otherwise it would seem to have been at least equally necessary to provide specifically for immunity from attachment and levy, as was done in § 10 of the Federal Railroad Control Act, c. 25,

40 Stat. 451, 456, which subjected rail carriers under federal control to liability to suit. Immunity of corporate government agencies from suit and judicial process, and their incidents, is less readily implied than immunity from taxation. See *The Lake Monroe, supra; Sloan Shipyards* v. *United States Fleet Corporation*, 258 U. S. 549, 566-568; *Olson* v. *United States Spruce Corporation*, 267 U. S. 462; *Merchant Fleet Corporation* v. *Harwood*, 281 U. S. 519, 524-526; compare *The Davis*, 10 Wall. 15; *National Volunteer Home* v. *Parrish*, 229 U. S. 494; *Standard Oil Co.* v. *United States*, 267 U. S. 76, 79.

In prescribing liability to suit, the qualifying phrase "as fully as natural persons" is not customary in acts defining the powers and duties of private corporations, or usual in those creating corporations to perform federal functions.[3] It appears in § 8 of the National Banking Act, enacted in 1864, c. 106, 13 Stat. 99, 101, which authorized national banks "to sue and be sued, complain and defend, in any court of law and equity as fully as natural persons." In 1873 the National Banking Act was amended, c. 269, § 2, 17 Stat. 603, to provide that "no attachment, injunction, or execution shall be issued against such association, or its property, before final judgment in any such suit, action, or proceeding in any State, county or municipal court." (R. S. § 5242, 12 U. S. C. 91.) This amendment, which impliedly saved the right of execution upon judgments against national banks, while forbidding attachment, would seem to be a recognition by Congress that the liability of national banks to suit "as fully as natural persons" extends by implication to attachment and execution. See *Pacific National Bank* v. *Mixter*, 124 U. S. 721; *Van Reed* v. *Peoples National Bank*, 198 U. S. 554; compare *Earle* v. *Pennsylvania*, 178 U. S. 449, 454. The legislative history of this section of the National Banking Act suggests that the like provision, without the amendment, was incorporated in the Federal Farm Loan Act as sufficient to subject

[3]See, e. g., the acts creating the Federal Reserve Banks, c. 6, § 4, 38 Stat. 251, 254, 12 U. S. C. 341; the War Finance Corporation, c. 45, § 6, 40 Stat. 506, 507, 15 U. S. C. 336; the Inland Waterways Corporation, c. 243, § 5, 43 Stat. 360, 362, 49 U. S. C. 155; the Federal Intermediate Credit Banks, c. 252, §201 (c), 42 Stat. 1451, 1454, 12 U. S. C. 1023; The China Trade Act Corporations, c. 346, § 6, 42 Stat. 849, 851, 15 U. S. C. 146; the National Volunteers' Home, R. S. § 4825; the Tennessee Valley Authority, c. 32, § 4, 48 Stat. 58, 60, 16 U. S. C. 831 c; the Reconstruction Finance Corporation, c. 8, § 4, 47 Stat. 5, 6, 15 U. S. C. 604, and the Home Owners Loan Corporation, c. 64, § 4 (a), 48 Stat. 128, 129, 12 U. S. C. 1463 (a).

federal land banks to the same liability to attachment to which national banks were deemed to be subject before the amendment of the National Banking Act.

While none of these considerations, taken alone, may be enough to give clear indication of the congressional purpose, their cumulative effect is persuasive that federal land banks, like joint stock land banks, were intended to be subject to the incidents of suit, including attachment and execution. In creating federal land banks as government instrumentalities, but with many of the purposes and activities of private corporations, in exempting them alone from taxation, and at the same time subjecting them, like joint stock land banks, to suit "as fully as natural persons," Congress cannot be thought to have intended that either class of banks should be immune from attachment, and their judgment creditors relegated to a receivership, allowed as a matter of grace, as the sole means of collecting their judgments.

In the present case it does not appear that the attachment would directly interfere with any function performed by petitioner as a federal instrumentality. We reserve the question whether a different result would be required if such an interference were shown.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.